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New York
Constitutional
Convention
1867-'68

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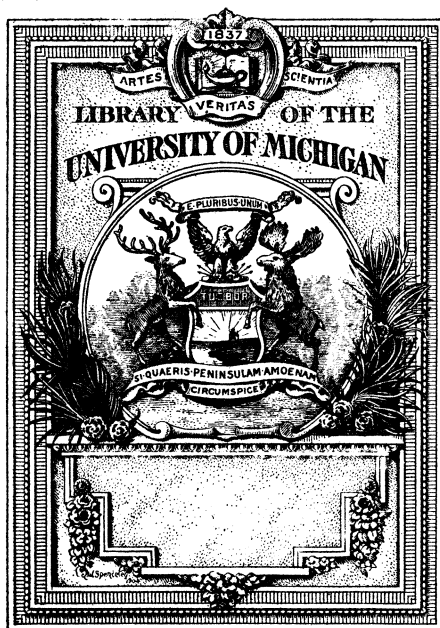
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PROCEEDINGS AND DEBATES

OF THE

CONSTITUTIONAL CONVENTION

OF THE

5-5-65-0

STATE OF NEW YORK,

HELD IN 1867 AND 1868,

IN THE

CITY OF ALBANY.

REPORTED BY EDWARD F. UNDERHILL,
OFFICIAL STENOGRAPHER.

VOLUME II.

FROM PAGE 801 TO 1600, WITH INDEX.

ALBANY:
WEED, PARSONS AND COMPANY,
PRINTERS TO THE CONVENTION.
1868.

IN CONVENTION, *Feb. 27, 1868.*

Resolved, That there be printed, in addition to the number already printed, a sufficient number of copies of the debates, documents and journals, to furnish each of the members with three copies; and also one copy each to the Mayor and the members of the Common Council of the city of Albany, and one copy each to the State Law Libraries at Rochester and Syracuse, the law libraries of the several judicial districts, the Law Institute, the Astor Library, and the New York Historical Society in the city of New York, and the Young Men's Associations of the cities of Albany and Troy.

LUTHER CALDWELL, *Secretary.*





products, of their agriculture and industry over the Erie canal. The tonnage from Western States from 1856 to 1866 coming to the Erie canal was 18,717,264. From this State, 3,272,016. If there should be deducted from the local tonnage of the State the western wheat that enters the Erie canal at Buffalo and from there sent to the mills at Lockport, Medina, Rochester, etc., and there manufactured into flour, and then shipped to the eastern market, it would decrease the local State tonnage 1,000,000,000 tons, for the period above indicated and increase the tonnage of the Western States a like amount. These facts are important as disclosing the sources of our canal revenues and the fatal consequences which would follow from the loss of the western tonnage to the Erie canal through our neglect to meet the commercial necessities and the reasonable demands of the northwest.

The proposition is a plain and incontrovertible one, that every dollar of toll which our State levies upon the property of a citizen of another, in consequence of its geographical position, is in violation of a fundamental axiom of our national Union, that each State would best promote its own interests, while promoting the interests of the others, in facilitating the means of transit through it. Each should be content with those advantages which follow, after having been repaid for its expenditures in furnishing and maintaining any channel of trade for others. Mr. Hoffman, whose stringent views were impressed upon every financial feature of the present Constitution, and the advocates of whose policy form a portion of every political party in this State, in the Convention of 1846, said: "I never can consent that the current expenses of the State should be charged upon the right of way which the sovereign holds, not as property for revenue, but in trust for the million—to promote travel, transportation and commerce." He also said: "Neither in form or substance do I accede to the doctrine, that the canal tolls shall be taken for general purposes—I deny it. The right of way is the right of the million. The sovereign holds in trust, and can exercise it only for their benefit, and has no right to make a revenue out of it. Such a course must engender the worst oppression and the worst corruptions, and soon realize the worst vices of the worst governments—taxation on all we consume, which will allow nothing to go to or from the markets without tribute to the State." He then only enunciated a principle in political economy announced a century ago, that a tax upon highways and trade was bad policy for a government and unjust to the people. The millions already taken by this State from western commerce beyond its requirements for expenditures in its aid, would seem, at least now, to authorize the demand for a change of policy, so that in the future only such tolls should be imposed on western commerce as would facilitate and cheapen its transit to the seaboard. At any rate, if the Erie canal, after paying the outstanding canal and general fund debts, is further called upon to repay to the State the amount and interest of the taxes levied and collected from the people, to construct and sustain the lateral canals, a policy should now be adopted

that would increase its ability so as to preserve its present trade and add to it in the future.

The policy of the enlargement of 1854, by removing the restriction of the present Constitution by a vote of the people, is now generally approved. It resulted in increased trade and increased revenues. It might be well asked here if the capacity of the Erie canal had not been increased to float boats over eighty tons, in 1846, up to 240 tons, and thus cheapened transportation one-half, how could the western commerce have been retained to the State? It certainly would have sought other channels to the ocean, and once lost to the State it could never be regained, and our people would have to suffer, not only for the folly of such unwise inactivity and failure to meet the demands of commerce in the loss of trade, but in increased taxation for the purpose of paying the existing canal debt. No truth is better understood than that the Erie canal, on account of its greater and cheaper ability in transportation, has given to this State its commercial supremacy in the carrying trade; and it is believed to be equally true, that no other carrying system has the ability to retain it. Railway and canal statistics show that, during the last six years, 48,007,761 tons of freight have been carried on the canal and the two trunk railways in this State, at a cost for tolls and transportation of \$135,987,067. The average cost of the railway charges per ton is \$4.42 and a fraction, and the average cost of the canal charges, including tolls, is \$1.88 and a fraction. The striking conclusion deduced from these statistics is, that whilst the Erie canal is only navigable for half the year, and these two trunk lines of railways are operated the whole year, the former has transported almost an equal amount of tonnage. But the most important fact remains to be noticed, one in which the industrial and producing classes are deeply concerned, is that the necessities of life and the products of industry are exchanged and delivered at less than half the cost by the canal. As nearly all the necessities of life which are consumed in the eastern portion of our State and the metropolitan city (the factor in this immense trade), pass through this State upon the Erie canal from the West, the price of freight is a tax paid by the industrial more than all other classes. Such articles are of great bulk and weight, and tolls fall most heavily on them. They are the necessities of life to all in equal degree. The rich man, however, pays for them from his abundance, the toiling millions from their hard won earnings.

This the Erie canal has accomplished, regulating and cheapening charges by other systems of transportation, which were it not for the canal would be still more exorbitant. All the tonnage moved by canal and railway in our State, it will be seen, average about 8,000,000 tons annually, at a cost very nearly of \$22,000,000. The canals move nearly half the amount at nearly half the cost by railways. Does any one doubt that in the economy of transportation by canal and its influence upon other means of transportation in this State, there is a saving to the people of this and other States, annually of at least a dollar a ton—\$8,000,000? This is more than it would cost to

enlarge the capacity of the Erie canal to 500 tons. Governor Fenton, in his message transmitted to the Legislature January 2, 1867, on the subject of the cost of the enlargement of the locks on the Erie and Oswego canals, says: "I am informed, however, by the present able State Engineer, and feel satisfied from this and other sources of information, that a suitable enlargement, with single locks of capacity for boats of five hundred tons burden, plain but substantial work, can be effected at a cost not exceeding \$6,000,000." Those who would doubt the restraining and economical influence of the uniform price of transportation upon our canals, upon railway transportation during the season of navigation, have only to recollect that immediately after the close of navigation upon our canals, railway conventions are found in session, revising their tariffs and raising them twenty-five or thirty per cent. In a recent report from managers of railways in Pennsylvania, the Erie canal is regarded as the regulator of freights in the North.

The excess of the cost of transportation by railway over the cost of transportation by canal has already been stated. We need not go beyond the limits of our own State to find an illustration of the cost of transportation by the latter, when, deprived of the State character which such works should possess, the private interest of individuals or the greed of gain upon the part of monopolists, becomes the controlling principle of their management. The Chemung canal junction is owned by private parties and managed for the purposes of private interest. It is fourteen miles long, and connects the Chemung canal in this State, with the coal mines in Pennsylvania. The exorbitant charge of \$2.58 per ton is made for the transportation of coal, the carriage of which affords by far the larger share of its business. This is confirmed by reference to Document No. 160 of the Assembly of 1867, in the report of the Investigating Committee of the Legislature, made April 6th, "into the matter of tolls charged on coal by the Junction Canal Company of New York;" which states that this combination "enhanced the price of coal consumed by citizens of western New York *full two dollars and fifty-eight cents per ton.*" The toll charged on coal per ton from Elmira to Buffalo, by State canals, is forty cents; from Troy to Buffalo, 345 miles, thirty cents, on bituminous coal.

With the decrease of our forests, coal has become substantially a necessary of life, and its importance as a necessity must rapidly increase; its cost, therefore, is a matter of great interest to the people of this State as well as the whole country.

This example, limited though it be in consequence, cannot fail to arrest attention, and beyond all question foreshadows something of the consequences should similar interests control the great works of the State. Surrender the control of the canals, more especially of the Erie canal, into private hands, and into those very hands is surrendered the power almost to nominate the price of coal; certainly arbitrarily to fix the price of this and many other of the leading necessities of life.

In the early history of our railways, arising

from ignorance, narrow and mistaken views of the currents of trade, managers and owners of railways regarded our canals as rivals in the carrying trade. A larger experience satisfied them that the superior and cheaper mode of transportation by the Erie canal for a certain portion of commerce, instead of injuring, benefited the railways by drawing through the State passengers and freight, of which they would have a fair share for half the year, and a monopoly during the other half, thus enabling them to retain the advantages which grew out of the commercial supremacy, which the Erie canal exercised during the season over all rivals in or out of the State, in bringing through the lakes vast deposits of freight to their and other mammoth storehouses, where the portion which remained after the close of navigation could be retained and shipped by the canal in the spring, or moved by railway in the winter, as the price of freights or the demands of the eastern market might indicate the interest of the owners.

It is difficult for us to appreciate fully the benefits conferred upon the State and nation, in all their parts, by the facilities of exchange afforded by cheap transit. It may be well claimed as the source of the material prosperity of this country. In other countries it adds value to property already existing; in ours, it may be said to create property. The West had scarcely a nominal value before the Erie canal was opened and afforded the means of carrying western productions to market. It is by transit, and that at a low price, enabling our people to supply their wants as well as to sell their productions, that we are to compete successfully with the people of other countries. When we speak in this connection, of the East, we should not limit our view within the confines of our own State, but include those States northerly and easterly from our own. Freedom of transit, without monopoly or taxation, is a necessary portion of the free trade between the States, which is the strongest material bond of peaceful union, and any efforts to interfere with it, create an animus injurious to the community in which they find favor, stimulating those who are injured to divert business to less advantageous routes, and leading in the end to a diminution of revenue and loss of trade.

The importance of continuing to maintain the Erie canal, as the regulator of freight and as the highway of our inland commerce, open, as at present, for free competition to all the people of the United States, subject only to payment of an equitable share in the actual cost of the advantages they thus enjoy, has not escaped the sagacity of discerning men from other States. A distinguished United States Senator, from the Northwest, explained the methods by which, in Wisconsin, Minnesota and Iowa, certain railroad companies had become so far consolidated as to constitute almost a complete monopoly for transportation in those States, with the natural result of exorbitant freights, unjustly putting money into the pockets of the few at the expense of the producers of national wealth. The Senator, on behalf of the people of his State, protested against regarding the Erie canal "in any other light than as a national work," stating in strong terms his reluctance "to let a company occupy the only un-

occupied ground for a transit route that there is between the Mississippi river and the Atlantic Ocean, and then set all people that are west of it at defiance, and charge just such tolls as they choose."

Governor Morgan, whose former official relations to the canal system of the State of New York gave him an intimate and practical knowledge of his subject, during a debate in the Senate of the United States, after predicting the effects upon the people of his own and other States upon the sale of the Erie canal to railway corporations, who he claimed must become the purchasers, and are ever ready and willing to run into debt to extend their monopoly, said: "The Senator from Ohio said this morning they burnt their corn for fuel. Let this monopoly be created and the Erie canal will be made to pay \$100,000,000; and they will not only be compelled to burn their corn in the West, but they will also burn their wheat when they get the entire control of the carrying trade. I think it will be the darkest day for the agricultural products of the West they ever saw."

He might have well included his own people as equal sufferers with the West, in that event, for whatever calamity has befallen one has been equally disastrous to the other, so closely are they bound together in sympathy and interest.

It would truly be the "darkest day" the people of this State ever saw, when the control of this channel of commerce should pass from their hands to complete the combination of colossal railway corporations, consolidating and extending throughout the country, and wielding as they would then \$400,000,000 of capital, with no check upon the price of delivery of the necessities of life, except their *forbearance*, and the easy virtue of modern Legislatures. The imbecility of a people that would permit it, would deserve any fate.

The commercial conventions in Chicago, in 1862, and in Detroit, in 1865, to which the Boards of Trade in every city and village in the Northern States sent large delegations, including many distinguished members of this Convention, adopted similar views, which were expressed in their report, as follows:

"Public sentiment requires, and has a right to demand, that the State of New York shall hold this great thoroughfare—this connecting link between the East and the West—not for local aggrandizement, or State revenue, but as the trustee of the nation; and impose only such tolls on commerce as shall be required to preserve the integrity of the work, and ultimately pay the cost of construction."

These views are sound in political economy, and such substantial adoption of them in the future policy of the State toward her sister States as would, by constitutional provisions, make the Erie canal hereafter a free, national canal, would be a measure of most enlightened policy and as promotive of the interests of our own people as honorable to the commonwealth. The public sentiment of mankind, as well as the dictates of political economy, require that products of vital and common necessity to the race should only be so taxed as to insure adequate and complete means for their transit.

In this brief reference to the various benefits which the construction of the Erie canal has conferred upon the people of this State, it ought not to be omitted, as it cannot be forgotten by this generation, the great changes which were at once produced upon its material prosperity.

It should be remembered by the Convention that the assessed valuation of all the real and personal property in the State of New York, as reported to the Comptroller in 1866, was \$1,531,229,636; that the value of the property transported on the Erie canal, in the thirty years from 1837, inclusive, was nearly three times the value of all the real and personal property of the State; that the canals for the last seven years have produced net revenues of \$20,636,868; that the Western States had, in 1860, a population of about 9,000,000, which is being decennially augmented at a ratio of 65 per cent; that the population of New York, Brooklyn, Albany, Troy, Schenectady, Utica, Syracuse, Oswego, Rochester, Lockport and Buffalo, in 1820, before the completion of the Erie canal, was only 162,921; that the population of those cities in 1865 was 1,398,526; that of the assessed valuation of all the real and personal property in the sixty counties of the State (\$1,531,229,636), seventeen, embracing New York city, Kings, Queens, Suffolk, Westchester, Albany, Saratoga, Washington, Schenectady, Oneida, Rensselaer, Oswego, Onondaga, Monroe, Niagara and Erie (less than one-fourth the area of the State), have \$1,227,526,000; and that these counties are all upon the line of the Erie canal.

Valuation of property in this State in 1825, when Erie canal was opened for business,.....	\$299,197,721 00
Valuation of property, 1866,.....	1,531,229,636 00
A tax of one mill on valuation of 1825, would produce.....	299,197 72
A tax of one mill on valuation of 1866, would produce,.....	1,531,229 63

The increase in the assessed value of property in 1866 over 1825, was 411½ per cent, which percentage also represents the increase in the product of a one mill tax in 1866 over a one mill tax in 1825.

It is no exaggeration to say that this vast increase of wealth through the center of the State has been created within 42 years by the commercial operations of that canal. All parts of the State have felt its benefits in some degree. There is not a piece of tillable land upon the Adirondack mountains, in the northern part of our State, or on the Green mountains, in the south, that has not been advanced in value by it. The causes which have produced these stupendous results will prove as powerful in the future as in the past, if unwise measures do not check progress and the full development of our original canal policy.

It is claimed by some that there is no danger of our losing the western trade. We have formidable rivals in railways and canals made or partly in operation or projected, in Maryland, Virginia, Pennsylvania and the British Provinces. Five great trunk lines, extending from the seaboard to and beyond Chicago, at present the greatest center of our great inland commerce,

including two trunk lines through Canada, one terminating at Suspension Bridge in Canada, the other the Grand Trunk, running over a subsidized American road to Portland, Maine, thence connecting with a British line of steamers to Liverpool. The latter line the new Dominion proposes now to own and operate. Canada has expended in the last quarter of a century over \$150,000,000 of British capital in constructing canals and railways to divert and control the great prize of this continent, our Western commerce. She has vainly striven to overcome the commercial and climatic difficulties of her geographical position, ambitiously constructing vast public works, and making large unremunerative investments, accomplishing results which at best can only be partial and transitory, deflecting a portion of our trade for a time, by discriminating legislation in aid of the gigantic struggles for existence of her unprofitable carrying systems, from the lines of commerce leading to our seaport cities, but only to return again, reacting to the loss and injury of those who have reaped a temporary benefit from the experiments.

It is only as late as 1865, Canadian commissioners in Washington, in their memorandum of terms for a renewal of the Reciprocity Treaty, submitted to the Committee of Ways and Means of the House of Representatives, a proposition to enlarge their canals for the passage of American vessels of over 1,000 tons, provided they could receive proper equivalents in reciprocal trade with the United States. Will any one say there is no danger to our trade from that quarter, now that the commercial and financial energies of all the British Provinces are concentrated under one head in their new Dominion? The struggle is not given up; it will be renewed at any cost, and true and wise foresight warns us to be prepared.

These gigantic rivalries around us are matters of the gravest moment—they should excite us to the most jealous vigilance with respect to the present. The recent movement proceeding from the North-west, looking to the building of a ship canal around the Falls of Niagara by our National Government, perhaps in equal degree should awaken our attention. The project includes the idea of now constructing the work "without the consent of the Legislature of the State." Never before has Congress attempted even the location of a "fort, arsenal or dockyard," within the boundaries of a State, without obtaining title to the necessary land, and the consent of the State Legislature; the people of the West are an energetic people; restiveness, impatience under real or imaginary embarrassment, are the necessary characteristics of such a race. In their view the vast volume of their productions upon its outward progress to the eastern States and the Atlantic sea-board, meets with obstructions which such a nation as our own should not hesitate to remove at once. Disappointed in the delayed enlargement of the Erie canal; disappointed until doubt has almost arisen as to the ability of the canal when enlarged to meet the necessities of the present and future commerce. The West now demands through her Senators in Congress, that some channel for the eastward course of its commerce should be found or forced in the

shortest possible time, and the last Congress has taken the initiative by ordering the survey for a ship canal around the Niagara Falls. The means by which such channel shall be accomplished, are regarded as of but little moment compared to what is deemed the immediate necessity of the channel itself. Substantial, however, as the general demand of the West is, and specious as is the scheme of the Niagara ship canal, it is certainly to be greatly apprehended that unless the people of this State shall comprehend the necessities of the hour and move on abreast with the times, even constitutional restraint, or rather the lack of constitutional power on the part of Congress, will not be found sufficient to prevent the consummation of this outrage upon State soil, and State dominion, and the work itself will stand upon our own soil, a monument of national aggression and State imbecility. The limited space allotted to this report will not permit the further consideration of this branch of the subject.

It is claimed by some that we possess natural geographical advantages which will always give us commercial supremacy. This is no doubt true if we improve them as we have in the past. It is true that of all the States, New York alone reaches from the Atlantic to the great chain of western lakes without encountering at one or more places the formidable obstacles presented by the Alleghany mountains. While her eastern front is on the ocean and includes harbors of unsurpassed excellence, her western territory is a portion of the great valleys of the interior. Rivers issuing from her highlands flow through her own boundaries into the Atlantic, or find their way by the Alleghany and Ohio into the Mississippi river and the Gulf of Mexico. Another of her boundaries is on the St. Lawrence. Rendering her advantages available by means of railways and canals, she is enabled to penetrate into all parts of our country by following routes which nature has already formed and indicated by her streams. While her valleys and rivers, with their natural extensions, reach to the Mississippi, the Mohawk and the Hudson gather together in one common channel the chief commerce of the great West and North, increased like their rivers by continual additions from their source until they reach the ocean.

Toward the great lakes and to the natural eastern termination of their navigation (Buffalo, also the termination of the Erie canal) the trade of the West has heretofore substantially concentrated. By the route through the State of New York only 500 miles in length (and a third of that distance through the Hudson river), the trade of the West, still retaining substantially its direct eastward course, reaches a safe and natural seaport upon the Atlantic.

This report has already extended beyond its intended limit. The subjects are so important commercially, financially and politically affecting the destiny of this State and the happiness of its people, that it seems scarcely possible to limit their consideration.

It will only now be added, great as are all the natural and geographical advantages of this State, we cannot retain our commercial supremacy, the

without we continue our early canal policy of progressive improvement. In the view of the undersigned our whole canal system is now in the crisis of its fate. Inaction now is an abandonment of our public works—it involves decay, loss of trade, and consequent taxation of the people.

The lessons of the times teach us that this is an age of progress and those who do not heed the teaching, whether they be States, parties or politicians, and keep step to the forward movement of the day will be forced behind by their more progressive rivals, who will bear off the palm of success.

ISRAEL T. HATCH.

PROPOSED FINANCIAL SECTIONS.

SECTION 1. The outstanding debts of the State and other liabilities for the payment of which the canal revenues are pledged by the terms of the Constitution of 1846, are the following on the 1st day of July, 1867 :

The old canal debt of 1846 (so called), ...	\$3,258,060 00
The general fund debt,	5,642,622 22
The canal debt under amendment of 1854, ..	10,807,000 00
The floating canal debt,	1,700,000 00

§ 2. The several debts specified in the preceding section, designated as the old canal debt of 1846, the general fund debt, the canal debt under the amendment of 1854, and the floating canal debt, amounting in the aggregate to \$21,407,682.22 on the first day of July, 1867, shall, with the new debt herein authorized, be paid as provided in the next section.

§ 3. After paying the expenses of collection, superintendence and the ordinary repairs of the completed canals, there shall be appropriated and set apart in each fiscal year, commencing on the first day of October, in the year one thousand eight hundred and sixty-seven, the whole of the remaining revenues of the State canals as a sinking fund to pay the interest as it falls due, and reduce the principal of the several stock debts specified in section two of this article, until the several debts shall be fully paid or provided for; and including the sum of seven millions of dollars hereafter to be borrowed by the Legislature, at a rate of interest not exceeding six per cent per annum, re-imbursable in eighteen years, to be applied and appropriated to the improvement of the Erie, the Oswego, and the Cayuga and Seneca canals to admit the passage of boats or vessels to pass thereon, of at least five hundred tons burden; and the moneys so borrowed shall be applied as above provided, together with the enlargement of the remaining small locks on the Champlain canal to the size of those now on the Erie canal, and to no other purpose whatever. But if it shall be ascertained that the improvements herein contemplated cannot be fully made and completed for the said sum of seven millions of dollars, then no moneys shall be borrowed for that purpose. The said several stock debts named in the first section of this article shall be fully paid by the first day of October, 1878; and if in any fiscal year there shall not be contributed from said revenues a sum sufficient to pay the pro rata contribution of principal in ten years with the balance then in the sinking fund,

then the deficiency shall be supplied by taxation the next year.

§ 4. After the debts specified in sections two and three of this article are fully paid or provided for, according to the provisions of section three, the remaining revenues of the canals, after paying the said expenses of collection, superintendence, and ordinary repairs, shall in each fiscal year be paid into the treasury of the State to pay the amount advanced for canal purposes by taxation specified in the first section, and the interest thereon, until the whole amount so advanced, with interest at five per cent per annum, shall be fully paid, and until any amount hereafter advanced for canal debt or other canal purposes, with interest thereon at five per cent per annum, shall be fully paid.

§ 5. After complying with the provisions of the third and fourth sections of this article, no tolls shall be levied on the canals except what may be necessary to pay the expenses of collection, superintendence and ordinary repairs, and other necessary improvements of the canals.

§ 6. The claims of the State against any incorporated company to pay the interest and reduce the principal of the stock of the State loaned or advanced to such company, shall be fairly enforced and not released or compromised, and the moneys arising from such claims shall be set apart and applied to the payment of said stock so loaned, or to repay the money which may be advanced to pay the same.

§ 7. Every contribution or advance to the canals or their debt, heretofore or hereafter, from any source other than their direct revenues, shall be repaid into the treasury with interest, at five per cent per annum, for the use of the State out of the canal revenues, as soon as it can be done consistently with the just rights of the creditors holding the debts specified in section number two.

§ 8. The Legislature shall not sell, lease or otherwise dispose of any of the canals of the State, but they shall remain the property of the State and under their management forever.

§ 9. No moneys shall ever be paid out of the treasury of this State, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law, nor unless such payment be made within two years next after the passage of such appropriation act; and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated and the objects to which it is to be applied, and it shall not be sufficient for such law to refer to any other law to fix such sum.

§ 10. The credit of the State shall not in any manner be given or loaned to or in aid of any individual, association or corporation, nor shall the money or property of the State be given or loaned to or in aid of any individual, association or corporation while there are any outstanding debts against the State.

Resolved, There should be a constitutional provision to the following effect: The credit of the State shall not in any manner be given or loaned to or in aid of any individual, association or corporation; nor shall any money belonging to the State, raised or to be raised by taxation, be

loaned or given to any individual, association or corporation, except that State contributions to public charities, asylums, schools, academies and colleges, may be continued, not exceeding annually the amounts appropriated for such purposes in any year prior to 1866.

§ 11. The State may, to meet casual deficits or failures in revenues or for unexpected expenses not provided for, temporarily contract debts; but such debts, direct and contingent, singly or in the aggregate, shall not at any time exceed one million of dollars, and the moneys arising from the loans creating such debts shall be applied to the purposes for which they were obtained, or to repay the debt so contracted, and to no other purpose whatever.

§ 12. In addition to the above limited power to contract debts, the State may contract debts to repel invasion, suppress insurrection or defend the State in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

§ 13. Except the debts specified in the twelfth and thirteenth sections of this article, no debts shall be hereafter contracted by or on behalf of this State, unless such debt shall be authorized by a law for some single work or object to be distinctly specified therein; and such laws shall impose and provide for a collection of a direct annual tax to pay, and sufficient to pay, the interest on such debt as it falls due; and also to pay and discharge the principle of such debt within eighteen years from the time of the contracting thereof. No such law shall take effect until it shall at a general election have been submitted to the people, and have received a majority of all the votes cast for or against it at such election. On the final passage of such bill in either House of the Legislature, the question shall be taken by ayes and noes, to be duly entered on the Journals thereof, and shall be: "Shall this bill pass, and ought the same to receive the sanction of the people?" The Legislature may at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same, and may at any time by law forbid the contracting of any further debts under such law; but the tax imposed by such act, in proportion to the debt and liability which may have been contracted in pursuance of such law, shall remain in force and be irrepealable and be annually collected, until the proceeds thereof shall have made the provision hereinbefore specified to pay and discharge the interest and principal of such debt and liability. The money arising from any loan or stock creating such debt or liability, shall be applied to the work or object specified in the act authorizing such debt or liability, or for the repayment of such debt or liability, and for no other purpose whatever. No such law shall be submitted to be voted on within three months after its passage, or at any general election when any other law or any bill or amendment to the Constitution shall be submitted to be voted for or against.

§ 14. Every law which imposes, continues or revives a tax, shall distinctly state the tax and the object to which it is to be applied, and it

shall not be sufficient to refer to any other law to fix such tax or object.

§ 15. No deficiency loan shall be made by or on behalf of the State, for a longer period than is necessary to enable the sinking fund provided for its payment to accumulate an amount sufficient to discharge it; and in no case shall such loan be made for more than six years.

The PRESIDENT—The minority report will be referred to the Committee of the Whole and be printed.

Mr. CLARKE—Mr. President, I desire to submit a minority report:

The SECRETARY proceeded to read the minority report of Mr. Clarke, as follows:

As a member of the Committee on the Finances of the State, the Public Debt, Revenues, Expenditures and Taxation, and Restrictions on the Powers of the Legislature in respect thereto, the undersigned dissents from the report of the majority of the committee, in reference to a portion of the article submitted, and offers as a substitute the following, and in a very brief manner further reports thereafter:

ARTICLE —

SEC. 1. After paying the expenses of collection, superintendence, and ordinary repairs, there shall be set apart, in each fiscal year, out of the revenue of the State canal, from the first day of June, 1867, the sum of one million seven hundred thousand dollars, to be added to the sinking fund, now existing, to pay the interest and to redeem the principal of that part of the State debt known as the canal debt of 1846, until the same shall be wholly paid; and the principal and income of said sinking fund shall be sacredly applied to that purpose.

§ 2. After complying with the provisions of the first section of this article, there shall be appropriated and set apart out of the surplus revenues of the State canals, in each fiscal year, from the first day of June, 1867, the sum of three hundred and fifty thousand dollars, until the time when a sufficient sum shall have been appropriated and set apart, under the said first section, to pay the interest and extinguish the entire principal of the canal debt therein mentioned; and from and after that period, then the sum of one million five hundred thousand dollars, in each fiscal year, shall be added and appropriated to the sinking fund, now existing, to pay the interest and redeem the principal of that part of the State debt called the general fund debt, including the debt for loans of the State credit to incorporated companies, made prior to the first day of June, 1846, so far as they shall, or may hereafter, become a charge on the State treasury or general fund, until the same shall be wholly paid; and the principal and income of said sinking fund shall be sacredly applied to the purpose aforesaid.

§ 3. After a full compliance with the provisions of the first and second sections of this article, there shall be paid out of the surplus revenues of the canals, to the treasury of the State, on or before the first day of September, in each year, for the use and benefit of the general fund, the sum of two hundred thousand dollars, for the support of the State government.

§ 4. After a full compliance with the provisions of the first, second, and third sections of this article, there shall be appropriated, in each fiscal year, from the surplus revenues of the canals, the sum of one million one hundred and sixteen thousand two hundred and forty-two dollars and sixty-six cents, to be added to the sinking fund now existing for the payment of the debt known as the enlargement and completion debt, until the same is sufficient to pay off and discharge said debt and interest, and the principal and interest of said sinking fund shall be sacredly applied to that purpose.

§ 5. After a full compliance with the provisions of the first, second, third and fourth sections of this article, there shall be appropriated and set apart from the revenue of the canals, the sum of \$187,500, in each fiscal year, to be added to the sinking fund, now existing, until the sum, so appropriated and set apart, shall be sufficient to pay the principal and interest of what is known as the floating debt loan; and the principal and income of said sinking fund shall be sacredly applied to that purpose.

§ 6. Such portion of the surplus revenue of the canals as may remain, after a full compliance with the provisions of the five preceding sections, shall, in each fiscal year, be applied to the payment of the sums which have been raised by taxation and drawn from the general fund for canal purposes, until that fund shall be fully reimbursed for all sums so drawn therefrom since the year 1846, with quarterly interest thereon, at the rate of six per cent per annum. As the revenues are so received into the treasury they shall be appropriated, or so much thereof as may be necessary to the payment of, or to the creation of a sinking fund for the ultimate payment of the principal and interest of the State debt, known as the bounty debt; and after all the objects provided for in this section and the previous sections of this article shall have been accomplished, and the several debts and obligations mentioned therein shall have been fully paid and discharged, the tolls upon the canals of the State shall be reduced to a rate calculated to produce a revenue sufficient to meet the expenses of collection, superintendence and all repairs that may be necessary to keep the canals in good navigable order and condition, together with the demands of the third section of this article and no more.

§ 7. The Legislature may provide by law, for borrowing any sum of money that may be necessary to pay the principal of any portion of the existing debt of the State, including the bounty debt, which the revenues of the canals applied as required by the preceding section of this article, may fail to meet, and may also authorize the raising, upon temporary loan of money to pay the deficiency of interest upon any State debt; but not for a longer period than may be required to raise the necessary amount by taxation. The interest on the bounty debt shall continue to be paid by means of taxation, as now provided by law, until the same can be paid from the surplus revenues of the canals, under the provisions of section five of this article.

§ 8. After the expiration of twenty years from the time when this article takes effect, no debt

shall be contracted by or on behalf of this State to pay any portion of the State debt that may remain unpaid under the provisions of this article unless the law authorizing the creation of such debt, shall itself impose and provide for the collection of a direct annual tax, for the purpose of paying, and sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal of such debt, within eighteen years from the time of the contracting thereof.

§ 9. The claims of the State against any incorporated company, to pay the interest and redeem the principal of the stock of the State heretofore loaned or advanced to such company, shall be fully enforced, and not released or compromised; and the moneys arising from such claims shall be set apart, and applied as part of the sinking fund provided in the second section of this article.

§ 10. The credit of the State shall not, in any manner be given or loaned to, or in aid of any individual, association, or corporation. The same restrictions apply to the counties, towns, cities, and villages of the State.

§ 11. No moneys shall ever be paid out of the treasury of this State, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation act; and every such law making a new appropriation, or continuing or renewing an appropriation, shall distinctly specify the sum appropriated and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.

§ 12. The State may, to meet casual deficits or failures in revenues, or for expenses not provided for, contract debts; but such debts, direct and contingent, singly or in the aggregate, shall not at any time exceed one million of dollars; and the moneys arising from the loans creating such debts shall be appropriated to the purpose for which they were obtained, or to pay the debts so contracted, and to no other purpose whatever.

§ 13. In addition to the above limited power to contract debts, the State may contract debts to repel invasion, suppress insurrection, or defend the State in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

§ 14. Except the debts specified in the seventh, eighth, twelfth, and thirteenth sections of this article, no debts shall be hereafter contracted by or on behalf of this State, unless such debts shall be authorized by a law, for some single work or object, to be distinctly specified therein, and such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal of such debt, within eighteen years from the time of contracting thereof; no such law shall take effect until it shall at a general election have been submitted to the people, and have received a majority of all the votes cast for and against it, at such election. On the final passage of such bill in either house of the Legislature the question shall be taken by yeas

and noes, to be duly entered on the Journals thereof, and shall be: "Shall this bill pass, and ought the same to receive the sanction of the people?" The Legislature may at any time, after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may at any time, by law, forbid the contracting of any further debt or liability under such law; but the tax imposed by such act, in proportion to the debt and liability which may have been contracted in pursuance of such law, shall remain in force and be irrepealable, and be annually collected, until the proceeds thereof shall have made the provision hereinbefore specified, to pay and discharge the interest and principal of such debt and liability. The money arising from any loan or stock creating such debt or liability shall be applied to the work or object specified in the act authorizing such debt or liability, or for the repayment of such debt or liability, and for no other purpose whatever. No such law shall be submitted to be voted on within three months after its passage or at any general election, when any other law or any bill, or any enactment to the Constitution, shall be submitted to be voted for or against.

§ 15. Every law which imposes, continues, or revives a tax, shall distinctly state the tax and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

§ 16. On the final passage in either house of the Legislature, of every act which imposes, continues or revives a tax, or creates a debt or charge, or makes, continues or revives any appropriation of public or trust money, or property; or releases, discharges or commutes any claim or demand of the State, the question shall be taken by ayes and noes, which shall be duly entered on the Journals, and three-fifths of all the members elected shall, in all such cases, be necessary to constitute a quorum therein.

§ 17. The Legislature shall not sell, lease or otherwise dispose of any of the canals of the State, but they shall remain the property of the State and under its management forever.

The debts of the State, for the payment of which the revenues of the canals are pledged, after deducting the unapplied balance of their sinking funds, were on the first day of July, 1867, as follows:

Canal debt of 1846,.....	\$2,102,804 62
General fund debt,.....	5,642,622 22
Annual annuity for support of State government,.....	200,000 00
Enlargement debt,.....	10,360,110 27
Floating debt loan,.....	1,211,028 32
Debt due general fund for advances for canal purposes since 1846, about,....	18,000,000 00

The bounty debt on the thirtieth day of June last was \$26,940,000. There will be due from the treasury to the sinking fund of that debt at the close of the present fiscal year, out of the receipts from taxes already collected, a sum sufficient to reduce the principal of the debt considerably below \$26,000,000.

By the provisions of the first, second, third and fourth sections of the article, herewith reported, the requirements of the Constitution of 1846, are fully carried out in reference to the payment of

the remaining portion of the canal debt of 1846, the general fund debt, the enlargement and completion debt, and the appropriation of \$200,000 per annum to the general fund, for the support of the State government.

At the time of the adoption of the present Constitution, the canals were indebted to the general fund for advances for canal purposes to the amount of about \$5,000,000; that debt seems to have been compromised by the provision in the Constitution requiring a perpetual annual appropriation of \$200,000, as mentioned above, from the revenues of the canals, to the general fund, for the support of the State government.

The fifth section provides for an appropriation of \$187,500 per annum to the sinking fund of the floating debt loan, heretofore paid by taxation.

The revenues of the canals have failed to meet the requirements imposed upon them by the present Constitution, consequently, there has been raised by taxation since 1846, and drawn from the General Fund for canal purposes, with interest added, about \$18,000,000.

The sixth section provides that after a full compliance with the provisions of the five preceding sections, that the remaining portion of the net revenues of the canals shall be applied to the payment of the sums raised by taxation and drawn from the general fund as stated above, and as the money is received into the treasury, it shall be appropriated to the payment of the bounty debt. It also further provides, that after all the preceding requirements are fulfilled, that the canal tolls shall then be reduced to a rate sufficient only to keep the canals in good repair and navigable condition.

The seventh section provides that money may be borrowed to pay any portion of the State debt, including the bounty debt, that the revenues of the canals may fail to pay, as it matures, and for the imposition of taxes to pay any deficiency of interest that the revenues of the canals may fail to meet.

Section eight provides that no money shall be borrowed after the expiration of twenty-five years from this time to pay any portion of the State debt that may then remain unpaid without a provision in the act authorizing the loan, requiring the payment of the principal and interest of the debt by taxation within eighteen years thereafter.

The ninth section provides that the credit of the State shall not be given or loaned to any individual, association, or corporation, and that the same restriction shall apply to the counties and towns, and cities and villages of the State.

The other sections are substantially the same as those in the existing Constitution, relating to the same subjects.

The contributions to the several sinking funds, now existing, for the payment of the canal debts, will, by the provisions of the article now submitted, continue the same as under the existing Constitution, consequently there will be no necessity of making any change in the mode of keeping the accounts or in either of the sinking funds.

By the operation of the sinking fund the debts will be paid as follows:

Canal debt of 1846 in 1868.

General fund debt in 1872.

Floating debt loan in 1872.

Enlargement debt in 1877.

The whole annual requirements to meet the obligations imposed upon the revenues of the canals are \$3,366,000. After the payment in 1868 of the canal debt of 1846, the requirements will then be reduced to \$2,816,242.66. Under the provision of section five of the article herewith reported, the appropriation of \$187,500 per annum to the sinking fund of the floating debt loan, which has heretofore been paid by taxation, will be added to the requirements, making the total amount for the next fiscal year \$3,003,742.64, and so continue until 1872, when the general fund debt and the floating debt loan will have been paid. From that period, after paying the appropriation of \$1,116,242.66 per annum to the enlargement debt sinking fund and \$200,000 per annum to the general fund, the remaining portion of the revenues would be applicable to the payment of the interest of the bounty debt.

After the payment of the enlargement debt in 1877, the entire net revenues of the canals with the exception of \$200,000 per annum, appropriated to the general fund, would be applicable to the payment of the principal and interest of the bounty debt. The law authorizing the bounty loan provides for the payment of the principal and interest of the debt by taxation within twelve years from the time of the passage of the act. The amount to be annually raised to meet the requisition is about \$4,000,000. By the provision authorizing the extension of the loan, nothing more would have to be raised by taxation for the payment of the principal of the debt.

If the revenues of the canals do not exceed \$3,000,000 per annum it will be necessary to raise by taxation a sum sufficient to pay the whole of the interest on that debt, up to the year 1892, when the general fund debt, and floating debt loan will have been paid. After that period the whole of the interest will be paid and provision for the payment of the principal of the debt, through the operations of its sinking fund, from the revenues of the canals. The people, therefore, from 1872 will be relieved from taxation on account of that or any other of the present debts of the State.

It will be observed that under the provisions of the article that the people would be at once relieved from the tax of \$187,500 per annum, to pay the appropriation to the sinking fund of the floating debt loan, and also from the tax of about \$2,600,000 per annum now raised to apply in payment of the principal of the bounty debts. The State taxes, therefore, would be about \$2,800,000 less the next year and thereafter until 1872, than they were the last year, and from 1872 until the bounty debt would have been paid, under the provisions of the act authorizing the debt, the tax would be about \$4,000,000 per annum less than they were the last year.

It has before been stated that the amount now due the general fund from the revenues of the canals is about \$18,000,000, and will, with the accumulated interest up to the time of its payment, amount to more than sufficient to pay the principal and interest of the bounty debt. No

more appropriate use could be made of the money when paid into the treasury than to apply it to the payment of the debts of the State, and thus relieve our overburdened people from taxation to that extent.

The only objectors to this course will probably be those who advocate an additional enlargement of the Erie and Oswego canal locks. An appropriation of the money to such a purpose, would, in the view of the undersigned, be injudicious; and it is believed, after due consideration, by the Convention and the people, that the advocates of that policy, whether in or out of this Convention, will be very few.

The engineer's estimates of the cost of the enlargement of the Erie and Oswego canal locks will be found on page forty-six of the last financial report of the Auditor of the Canal Department, as follows:

CANALS.	Stone locks.	Wood locks.	Wood and stone locks.
Erie,....	\$11,902,888 15	\$10,718,040 15	\$10,985,946 65
Oswego,..	2,505,000 00	1,901,000 00	2,064,000 00
	\$14,405,888 15	\$12,619,040 15	\$13,049,946 65

The Auditor remarks in reference to the estimates: "It may be doubtful whether either of these sums will now be sufficient to pay the cost of the work, whichever plan may be adopted. The estimates were made in 1863, and while I have no doubt great care was had in making the measurements and estimates of quantities, it may be questionable whether the prices used were not below what the work and materials would now cost when let to competing bidders." The cost would probably exceed \$20,000,000.

The Erie canal was completed in 1825. At that time the western part of the State was but sparsely settled, and was in fact comparatively a wilderness, producing hardly sufficient for its few inhabitants. Only three of the Western States were then organized. Until the year 1830, the small surplus of flour, meal, pork, etc., produced in the western part of this State, was sent to the then territory of Michigan, and to other portions of the West, for the subsistence of new settlers.

The astonishing effect of the construction of the Erie canal, in increasing the population and in developing the resources of our own State and the great West, was such, that in a few years it became apparent that the carrying business would soon exceed the then capacity of the canal, and provision was made for its enlargement. The work of the enlargement was commenced in 1835, and so far completed as to admit the larger class of boats in 1853.

While, however, the enlargement was in progress, the population, wealth and resources of the country had so vastly increased, of which the canal itself had been the occasion and the stimulus, that the demands of travel and commerce had covered the land with a net-work of railroads. Two roads had been constructed running parallel with the Erie canal, from tide waters to Lake Erie, competitors with the canal for freight,

and superseding it entirely in the transportation of passengers. There has been, consequently, no considerable permanent increase of freight on the Erie canal since 1853. The increase of freight to and from tide waters, has, since that period, been carried by railroads, and the tendency of that increase is still steadily in the same direction.

Hon. D. W. C. Littlejohn, Chairman of the Canal Committee of the last Legislature, in a report in reference to enlarging the locks of the Erie and Oswego canal, says:

"Latterly the people of this State find very little use for their canals. Their surplus products are small and mostly consumed in the vicinity of their growth by adjacent cities and villages. The tonnage going to tide water, the product of this State, has been steadily declining for nearly fifteen years, until the total tolls thereon are scarcely half sufficient to pay the expenses of keeping the canals in order; and the merchandise for the interior, purchased at the sea-board, is shipped by the railroads almost exclusively."

The Auditor's report shows that the number of tons which arrived at tide-water by the Erie canal from the State of New York, in 1853, was 637,748; in 1866, only 287,948 tons; and in 1837, thirty years ago, the quantity was 321,251 tons, or 33,303 more than in 1866.

The following statements from the report of the Auditor of the Canal Department shows the quantity of wheat and flour which reached the Hudson river by canal, in each year, for the last fourteen years:

	TONS.
1852.....	576,772
1853.....	618,858
1854.....	240,655
1855.....	301,125
1856.....	475,385
1857.....	263,141
1858.....	454,831
1859.....	250,872
1860.....	710,138
1861.....	1,054,295
1862.....	1,177,292
1863.....	846,446
1864.....	606,891
1865.....	420,644
1866.....	289,166

The average for the whole period shows that there has been a small decrease.

The following statement from the Auditor's report shows the number of tons moved on the Erie canal in each year for the last fourteen years:

1852.....	2,129,834
1853.....	2,196,308
1854.....	2,244,008
1855.....	2,202,463
1856.....	2,107,678
1857.....	1,566,625
1858.....	1,767,004
1859.....	1,753,954
1860.....	2,253,533
1861.....	2,500,782
1862.....	3,204,277
1863.....	2,955,302
1864.....	2,535,692
1865.....	2,523,490
1866.....	2,896,027

One boat making four round trips in each year could have carried all of the average increase for the whole period.

The following statement from the Auditor's report shows the total number of tons delivered at tide water from the Erie and Champlain canals, in each year for the last seven years:

1860.....	2,854,877
1861.....	2,980,144
1862.....	3,402,709
1863.....	3,274,727
1864.....	3,805,257
1865.....	2,730,181
1866.....	3,305,607

The average increase is only about equal to one boat load in each year.

The following statement, also from the Auditor's report, shows the number of tons carried on all of the canals of the State in each year for the last fourteen years:

1853.....	4,247,823
1854.....	4,165,868
1855.....	4,082,617
1856.....	4,116,082
1857.....	3,341,061
1858.....	3,665,192
1859.....	3,781,784
1860.....	4,050,214
1861.....	4,507,635
1862.....	5,598,785
1863.....	5,577,692
1864.....	4,852,941
1865.....	4,729,654
1866.....	5,575,220

The above shows a small average increase, but not equal to the increased tonnage of coal and products of the forest mostly upon the lateral canals. The following statement, also from the Auditor's report, shows the number of lockages to and from the Hudson river, from 1847 to 1866, both inclusive:

1847.....	54,230
1848.....	42,714
1849.....	46,852
1850.....	51,422
1851.....	56,799
1852.....	57,368
1853.....	52,826
1854.....	46,787
1855.....	38,319
1856.....	46,019
1857.....	28,374
1858.....	33,774
1859.....	27,874
1860.....	34,609
1861.....	34,594
1862.....	40,245
1863.....	35,017
1864.....	28,993
1865.....	29,406
1866.....	30,226

It will be observed that the greater number of lockages in any one year of the series, was 57,368, in 1852, and that the lockages in 1866 were only 30,226.

It further appears, by the Auditor's report, that the greatest number of lockages at any one lock on the Erie canal, before the enlargement, was in 1847, at Alexander's lock, west of Schenectady, then a single lock. The number of boats passed was 43,957. The double locks at that point are now capable of passing double the number, or 87,914 boats, within the time occupied in passing the boats in 1847, and each boat, if as large as the locks now admit, capable of carrying three times the number of tons that the boats carried in 1847. The number of lockages last year (1866) at Alexander's double locks was only 29,882 or 14,075 less boats than passed the single lock in 1847.

It is not necessary to add other statistics to show that there has not been any permanent increase, worthy of notice, of tonnage on the canals, since the completion of the enlargement. There has been a gain in the quantity of coal and in the products of the forest transported on the canals, otherwise the aggregate would show a large falling off.

It is evident that the railroads have carried all the increase of freight for the last fourteen years, and that the canals have reached their maximum without having been taxed to the extent of more than one-quarter of their capacity.

The State Engineer and Surveyor recommends, as a measure to meet the growing demands of our internal commerce, the enlarging of the locks of the Erie and Oswego canals. The chief argument urged in favor of the measure is that by admitting larger boats the cost of transportation would be greatly reduced, and the speed of movement of boats increased.

It should be borne in mind that the officer referred to recommends the enlarging of the locks without enlarging the canals. Conjectures, therefore, of increased speed under such conditions can have no authority whatever, and as conjectures they are rendered of little value, as the results of experience have shown. A loaded boat of the size recommended will be equal to a tonnage displacement of 684 tons. Now it has been found practically by forwarders that boats of the size now in use, which are generally far smaller than the capacity of the locks, cannot be propelled with the speed attained by smaller boats before the canals were enlarged. We have a right, therefore, to believe that, with another enlargement of boats, there would be another diminution of speed.

The Auditor in his report shows that the average time for the passage of boats from Buffalo to Albany, has increased since the completion of the enlargement, from eight and a half to ten days. The larger class of boats require twelve days.

The tonnage capacity of boats now admitted through the locks, can certainly be rated as high as 250 tons, some are registered as high as 300 tons, and they pass the locks as readily as smaller boats. And yet the Auditor's report further shows, that the average tonnage of the 485 new boats built last year was only 154 tons. After making due allowance for a few smaller class of boats built for some of the lateral canals, the new boats are not within forty per cent. as large as the locks will admit. With this greater capacity inviting use, and certain to be used if required and profitable, we find this small average of tonnage of new boats built fourteen years after the completion of locks which admit boats of at least one-third more tonnage. Our enterprising forwarders are either failing to appreciate their privileges, or too shrewd not to see that their privileges are greater than it is profitable for them to accept.

The average tonnage of boats built in 1862 was 168 tons; those built in 1863, 177 tons, and those built in 1864 and 1865 were of considerable less tonnage than those built in the two previous years, and as previously shown, those built in 1866, averaged 154 tons.

The above shows that forwarders find it for

their interest to diminish the size of boats, and consequently increase their speed of movement, rather than increase the size of boats, and consequently diminish their speed.

It is admitted that nearly all of the up or western bound freight is now carried by railroads; boats, therefore, have but little up freight, and that of a class such as coal, etc., which is carried at very low rates. It requires thirty days' time for a large boat to make a round trip from Buffalo to Albany and back, including time of loading and discharging cargo. Under such circumstances it is hardly within the range of probabilities that there can be any reduction of cost of transportation on the canals.

In reference to the use of steam on the canals as a propelling power, the State Engineer and Surveyor says in his report:

"The experiments thus far made in the use of steam as a motor have been unsuccessful. This result is attributable to the want of capacity in the locks. The room occupied by the power necessary for rapid transit is too great, as compared with the space remaining for stowage of cargo to make its use economical. The difficulty will be greatly lessened, if not entirely removed, by the use of the large boats." Now if the difficulty assigned is the only obstacle in the way of using steam, it would seem that it could be more easily overcome by using steam tugs, that would run two boats 100 feet long each, than to expend say \$20,000,000 to try the experiment of propelling a boat 200 feet long with the propelling power in the boat. The fact is the use of steam has been thoroughly tested and proved a failure, by reason of the boats being already too large for the size of the canal, the resistance of the water is too great to admit of a propulsion of more than two miles per hour with safety to the canal banks.

When the State debts are paid from the revenues of the canals, the tolls could be reduced to a point sufficient only to keep the canals in repair. In that way they would be more formidable competitors of railroads than it is otherwise possible for them to be. The canals would continue for all time to carry coal, lumber, and other freight that cannot be easily handled on cars, and have a tendency to keep down the prices of other classes of freight on the railroads. In this way the canals will continue to be of great service to the State, even after they have ceased to yield a revenue beyond keeping them in repair.

The enlargement of the locks would have no influence whatever in retaining our ascendancy in transportation. If we rely upon our canal to do the carrying trade of the West, a large portion of it will be diverted into other channels, and lost to the State.

Great and important as was the conception of our canal system, it is evident that it has in a great measure fulfilled its mission. The progress of the country is in advance of the canals; we have outgrown their first and more important use. With the exception of a part of the canals of this State, it is believed that there is not one in the whole country, owned and operated upon by a State, that is productive. Several canals have been entirely abandoned, and not one of the least importance has been constructed within the last twen-

ty years. Railroads, on the other hand, have vastly increased and will continue to increase. The records in the office of the Secretary of State show that 248 companies have been organized in this State since the passage of the General Railroad Act, in 1848, with an aggregate capital of \$236,903,000, and length of roads 6,967½ miles. In the United States there are now about 38,000 miles of railroad.

It is plain to be seen that railroads are superseding canals in every section of the country. Speed is now the great desideratum of the times. This is demonstrated by the transportation through our State. The freight, including tolls, on all of our canals the last year, as appears by the Auditor's report, was \$10,160,051. During the same year, the receipts for carrying freight on the Erie and New York Central roads alone were \$21,282,943.

More business could probably be forced upon the canals by imposing tolls on railroad freight, but it would be unwise to do so. There are competing thoroughfares to the sea-board, our natural advantages are very great, but in order to retain our supremacy we should refrain from imposing restrictions tending to depress individual or corporate enterprise.

Great advances have already been made in the construction and management of railroads, but so far as the business of freight is concerned, they are comparatively in their infancy. The time is not far distant when railroads will as effectually supersede other methods of carrying freight, as they have already other modes of carrying passengers. The freight business through this State will soon demand (and individual enterprise will meet the demand) a double track railroad, exclusively for freight, from New York to Buffalo, and ere long to connect with the Pacific road.

The capacity of such a road will meet all the requirements of our internal commerce for the next fifty years. The canals and railroads, running both passenger and freight trains, could not successfully compete with it. On a road substantially built, with grades not exceeding ten feet to the mile, trains of one hundred cars, carrying ten tons on each car, could be drawn by a single engine. Trains could be multiplied to any extent that business should require. Two hundred trains going up and two hundred trains going down could be upon the road at the same time, carrying one thousand tons each, and not occupy more than forty-eight hours from Buffalo to New York, one hundred trains arriving at each terminus in every twenty-four hours. This would give an aggregate for the year of 73,000,000 tons, which at \$2 per ton (or about \$1 per ton over tolls now paid on the canal), the gross yearly receipts of the road would amount to \$146,000,000.

There is not, of course, any probability of there being any such quantity of freight to be carried, for a generation to come. The estimate is made in order to show the capacity of a road of that character. If, however, such a road should be constructed, it would be safe to say that it would carry 10,000,000 tons the first year after its completion, or what would be equivalent to that amount of through freight. To transport that

quantity, would require the arrival each way of only fourteen trains per day.

If the trains were but half as large, say fifty cars of ten tons each, the general result would be varied but little. It would be the additional expense of the motive power only.

Such are the probabilities and prospects of railroad transportation. Nothing can be clearer than that such transportation, at rates favorable to the companies and to the public, can be made to outstrip any conceivable demand. Nor is it to be doubted but that our people will find or make a way for the realization of these advantages, whatever the impediments which a mistaken policy may for the time interpose.

FREEMAN CLARKE.

The PRESIDENT—The minority report just read, will be referred to the Committee of the Whole and be printed.

Mr. LAPHAM—The Committee on Canals closed their labors last evening, and this morning took up and perfected the article which they have concluded to recommend for the consideration of the Convention; but as the evidence which has been taken before the committee has not yet been written up by the stenographer, the report that we design to accompany the article is not yet fully completed. We ask, therefore, in view of the fact that the elaborate reports which have just been read deal somewhat extensively with the subject of the canals, to place our report on file; and in connection with that we ask leave to add to the report the reasons which we assign for the article we report at a subsequent day. As the article has not been engrossed, I ask that a member of the committee read it from the draft to the Convention.

There being no objection, Mr. ALVORD read the article reported by the Committee on Canals as follows:

ARTICLE

SECTION 1. The Comptroller, Treasurer, and Attorney-General shall be the Commissioners of the Canal Fund; said Commissioners shall have power to appoint and remove all officers who shall be intrusted with the ascertainment, collection and safe keeping of the revenues derived from the tolls on the canals of this State, and with the Auditor of the Canal Department and the Superintendent of Public Works, shall determine and fix the rates of tolls on the canals, which shall not be reduced below the rates fixed for the year eighteen hundred and sixty-seven, until all liabilities and debts recognized by this article shall have been paid or provided for; the Commissioners of the Canal Fund shall also have such further powers and duties as now are, or may hereafter be prescribed by law, not inconsistent with this Constitution.

§ 2. The Governor shall nominate and with the consent of the Senate, appoint an Auditor of the Canal Department, who shall hold his office during the term of five years, at a salary to be fixed by law; and he shall have such powers and perform such duties as now are or may hereafter be prescribed by law and not inconsistent with this article. He may be suspended from office by the Commission-

ers of the Canal Fund for incompetency, neglect of duty, or malfeasance in office, and removed by the Governor on their recommendation; but no such suspension or removal shall be made unless he shall have been previously served with a copy of the charges preferred against him, and shall have had an opportunity to be heard in his defense. In case of the suspension or removal of the Auditor of the Canal Department under this section, or his vacation of the office for any cause during a recess of the Senate, the Governor, upon the recommendation of the Commissioners of the Canal Fund, may appoint a proper person to act as such officer during such suspension, or to fill the vacancy occasioned by such removal or vacation of office, and the person so appointed shall hold such office no longer than the duration of the session of the Senate succeeding such appointment.

§ 3. The Governor shall nominate to the Senate, and with its consent, shall appoint a Superintendent of Public Works, who shall hold office for eight years, and whose salary shall be determined by the Legislature. He shall be vested with the control of all matters relating to the repairs and keeping in navigable order of the canals, and of any improvement that may be authorized by law, and of the rules and government of their navigation. He may be suspended from office and removed by the Governor, on the recommendation of the Commissioners of the Canal Fund, for incompetency, neglect of duty, or malfeasance in office; but no such removal shall be made unless he shall have been previously served with a copy of the charges preferred against him, and shall have had an opportunity of being heard in his defense. In case of the suspension, removal from office, vacation, or inability to serve, from any cause, the Superintendent of Public Works, during the recess of the Senate, the Senior Assistant Superintendent of Public Works shall act in his place and stead; but not for a period beyond the session of the Senate next after such suspension, removal, vacation, or inability to serve. The Governor, upon the recommendation of the Superintendent of Public Works, may nominate, and with the consent of the Senate, appoint four Assistant Superintendents of Public Works, who shall hold their office eight years, at an annual salary to be fixed by law; the said assistant superintendents shall be subject to the authority and control of the Superintendent of Public Works, and may be removed by him for cause; all other officers and employees necessary for the care and management of the canals, other than financial officers, may be appointed by the Superintendent of Public Works, subject to removal by him, and he may have such other powers and duties, not inconsistent with this article, as may be prescribed by law.

§ 4. The Canal Board, the Contracting Board and the powers and duties of the office of State Engineer and Surveyor, as applicable to the canals, are abrogated; the office of Canal Commissioner and Canal Appraiser are hereby abolished, to take effect on the first day of January, eighteen hundred and sixty-eight. The Canal Commissioners and Canal Appraisers in office at the time of the adoption of this Constitution, may

hold their respective offices until, and including the thirty-first day of December, eighteen hundred and sixty-seven, and no longer.

§ 5. No moneys shall be appropriated or paid by the State, or out of the canal revenues, for the construction or maintenance of any bridge over any of the State canals or feeders connected therewith, at any point where a bridge was not located and maintained at the expense of the State prior to the first day of January, 1867. Nor for any damages or injury sustained in the navigation or use of any of the canals of this State, or feeders or structures connected therewith. Nor for any damage or injury caused by any breakage or defect in any of the State canals, feeders or structures connected therewith. Nor for any damage or injury arising from, or on account of the construction or maintenance of any of the State canals, feeders or structures connected therewith. Nor for any extra allowance or compensation to any person for, or upon, any contract after the services shall have been rendered, or contract entered into. The immunity of the State shall not at any time be waived by the Legislature, or any public officer or body. But nothing in this section contained shall be construed to prohibit the payment of just compensation for property or water appropriated, provided the demand for such compensation be made within three years after the appropriation.

§ 6. The canal stock debt contracted prior to the first of June, 1846, amounting on the first day of May, 1867, to,	\$3,265,900 00
The canal enlargement debt amounting at the time aforesaid to,	10,807,000 00
The floating debt loan, contracted under the provisions of chapter 271 of the laws of 1859, amounting at the time aforesaid to,	1,700,000 00
	<hr/>
	\$15,772,900 00

shall hereafter be known and designated as the canal debt; and the several sinking funds applicable to the payment of the said debts, amounting at the time aforesaid to the sum of \$2,010,734.35, together with the contributions to be made thereto, and the income thereof, shall be known and designated as the canal debt sinking fund.

§ 7. After paying the expenses of collection, superintendence and repairs of the canals of the State, the surplus revenue thereof shall in each year, commencing with the year eighteen hundred and sixty-seven, be set apart and paid into the canal debt sinking fund; and the principal and income of said fund shall be annually appropriated and applied to the payment of the canal and general fund debts, and to the improvement of the canals, in the following manner and order, until the said debts have been paid and such improvements as herein stated shall have been completed:

First, To pay the principal and interest of the canal debt falling due within the year.

Second, To pay the interest on the general fund debt due within the year.

Third, To pay the expense of completing the enlargement of the locks on the Champlain canal, and the deficiency, if any, of enlarging the prism of said canal, as provided by chapter one hundred and eighty-six of the Laws of eighteen hundred and sixty-four, not exceeding the sum of three hundred thousand dollars in the aggregate, for such improvements.

Fourth, After complying with the foregoing provisions of this section, the residue of said sinking fund, or so much thereof as may be necessary, shall be annually appropriated to pay the expense of removing the wall benches and furnishing all necessary supplies of water upon the Erie canal, of enlarging such of the bridges and aqueducts, and the approaches leading thereto, as may be necessary upon the Erie, Oswego, and the Cayuga and Seneca canals, and of constructing one tier of locks from the materials in the present locks (so far as the same shall be sufficient, and when insufficient to supply the deficiency with new materials) upon the said canals, of such dimensions as will admit the convenient passage of boats the entire length of said canals, twenty-three feet in width and two hundred feet in length, and drawing six feet of water, propelled by steam or otherwise; the total expense of all such improvements shall not exceed the sum of \$8,000,000 in the aggregate. The work shall be confined within the present limits of said canals, except so far as it may be necessary to bring in additional supplies of water; shall be commenced in the year 1868, and shall be completed under the supervision and direction of the Superintendent of Public Works, as soon as the surplus revenues of the canals, as herein provided, can accomplish the same, without material interruption to the navigation on said canals; except as provided in this article, the general width and depth of said canals shall remain as at present existing and authorized by law.

§ 8. After the payment of the canal debt, or after a sum sufficient shall have accumulated in the sinking fund to accomplish that object, the general fund debt, now amounting to \$5,642,622.22, shall be paid from the canal debt sinking fund. If at any time the said fund shall prove insufficient to pay the interest or principal of the canal and general fund debts, as provided in sections seven and eight of this article, the deficiency shall be supplied by loan upon the credit of the said sinking fund. In case such deficiency cannot be so supplied at a satisfactory rate of interest, the Legislature shall make other provision therefor, so as to fully preserve the public faith.

§ 9. Every contribution or advance to the canals of this State made since June one, eighteen hundred and forty-six, or which may hereafter be made, from any source except their direct revenues, shall, with interest thereon at current rates, be repaid into the treasury of the State out of the canal revenues, as soon as the same can be done consistent with the provisions of this article. All sums so paid shall, together with all surplus revenues thereafter derived from the canals, be applied exclusively to the payment of any then

existing debt of the State, until the same shall be fully paid.

§ 10. The Legislature shall not sell, lease or otherwise dispose of any of the canals of this State, but they shall remain the property of the State and under its management.

The PRESIDENT—The report will be referred to the Committee of the Whole and be printed.

Mr. SCHOONMAKER, from the Committee on Canals, submitted the following minority report:

The undersigned, a minority of the Committee on Canals, dissenting from some of the conclusions of the majority of said committee, ask leave respectfully to

REPORT:

That they dissent from so much of the report of the majority of said committee, as recommends that the care and management of the canals be intrusted to one Superintendent of Public Works, with four Deputy Superintendents under him, all to be appointed by the Governor, by and with the advice and consent of the Senate.

The undersigned fully concur with the majority, in the necessity of changing the present management of the canals, and of concentrating power and responsibility. We believe that the division of power, as existing under the present system, has destroyed all feeling of responsibility, and has been the cause of much of the laxity in the care and management of the public works. We, however, differ from the majority in the matter of detail.

The majority seek to create a one man power, appointed by the Executive, by and with the advice and consent of the Senate, but without direct responsibility to the people, and holding the patronage of one thousand miles of canals, and with thousands of men depending upon his fiat for their daily bread. In these days of laxity in official morals, it is truly a fearful power to be placed in the hands of any man. It is a power which, in the hands of a designing politician, can be used to control political nominations and elections. It is unnecessary to dilate upon the dangers of such an overshadowing one man power. Its extent must be apparent to any reflecting mind.

It is true, the evils to be remedied are great and of vital importance, but the question arises, is it necessary to resort to such hazardous remedy? The undersigned think not, and believe it to be both unwise and unnecessary, because, it is a fundamental principle in government, that to create a proper and efficient responsibility, more must not be required of the agent than he will be able well and efficiently to superintend and direct, personally. His subordinates must be the men who do the work in pursuance of his directions and under his personal supervision. Then, there is a responsibility, coupled with a power of execution. That is not the case when you commit the charge of one thousand miles of canal to one person. He cannot personally supervise and control the whole. The superintendence and control of sections must necessarily be intrusted to subordinates, and the success of the management is entirely dependent upon the manner in which the subordinates perform their duty. The responsibility, therefore, thus created, is simply the legal,

technical responsibility of a principal for the acts of omission and commission by his subordinates. That responsibility is not, and never can be, so greatly felt or appreciated by the agent, as when the responsibility is in reference to his own acts.

The undersigned seek to obviate this objection and bring the responsibility directly to the officer, by creating, instead of one, four Superintendents of Public Works, and dividing the canals into four distinct sections, each section to be assigned specially to the care, management, and control of one of the superintendents. Each superintendent can then personally superintend and frequently inspect every part of the particular section assigned to him, and for the entire care, management, and good government of which he is to be held responsible. The division of the canals into four sections will bring the work to be performed by each superintendent within the compass of his ability, so as to create a direct personal responsibility, without the power to shift it upon subordinates.

The patronage of the canals is, we know, a fearful power, in the hands of one or more designing politicians, acting in concert. But it is one which must of necessity exist, and be lodged somewhere; and we believe it to be more safe divided between four than concentrated in a single head.

At the same time that we, in the plan proposed by us, give each superintendent the entire charge of the section assigned to him, in order to make responsibility complete we propose to vest in him the entire power of appointment and removal over his subordinates.

The rules and regulations needful to control and regulate the navigation and use of the canals, feeders and structures connected therewith, should be uniform throughout their entire extent; and, therefore, the undersigned propose to create the Board of Superintendents, to be composed of the four superintendents, whose duty it shall be to make and prescribe all such regulations and rules, and shall also divide the canals into four appropriate sections, and assign one of their number to each section. We propose, also, that in case any extraordinary improvements are authorized or directed by the Legislature in relation to the canals, that the general direction of that shall be under the control of the Board of Superintendents.

With these views, the undersigned recommend the adoption of their substitute by the Convention, as being safe and more efficient, and creating a more direct responsibility in execution.

The undersigned also dissent from the report of the majority as to the manner of selecting the officials to be charged with the care and management of the canals. The majority intrust it to the Governor and Senate, *we* recommend it to be placed in the hands of the people, the source of all power.

In order to avoid the necessity of a special election, and at the same time inaugurate the new system as early as practicable, we recommend the appointment of the first Board of Superintendents by the Legislature in joint ballot. After that, at the expiration of every two years, one superintendent to be elected by the people. The entire term of a superintendent to be eight

years, and the term of office of the first four to be so arranged, at the time of their appointment, that the term of one will expire at the end of every two years. We also suggest, for the consideration of the Convention, that the salary be fixed at \$5,000, as being a sum sufficient to command the requisite talent and executive ability for the position. A less amount would undoubtedly procure incumbents, but would not command the requisite ability and talent.

With these suggestions thereupon, the undersigned recommend the following sections as a substitute for section three of the article recommended by the majority of the Committee on Canals.

§ 3. The general care and superintendence of the canals, feeders and structures connected therewith, and the control of all matters relating to their repair and maintenance, and keeping them in navigable order, shall be vested in four Superintendents of Public Works, to be elected as hereinafter provided. The said superintendents shall together constitute a board, to be called the Board of Superintendents of Public Works, and shall have the general direction and control of all extraordinary improvements of the canals, feeders or structures connected therewith, that may be authorized by law; and it shall be their further duty to prescribe all proper and necessary rules and regulations to control and regulate the navigation and use of the State canals, and the feeders and structures connected therewith. It shall also be the duty of said board, to divide the said canals and feeders into four divisions, as nearly equal as may be, and assign the special charge and superintendence of one of said divisions to one of the superintendents, so that each superintendent shall have the charge of one division.

The superintendent in charge of a division shall have the entire charge, care and control of all matters relating to the repairs and maintenance of the division under his charge, and it shall be his duty to keep the same in good and navigable order, and see that all the rules and regulations prescribed by the Board for the navigation and use of the canals, their feeders and structures, shall be observed and enforced. He shall also select and appoint all officers and employees necessary for the proper discharge of his duties upon his division, and remove them at pleasure. The rate of compensation and salaries of such officers and employees shall be regulated and fixed by the Board. It shall be the duty of each superintendent to take the personal charge and superintendence of the particular division assigned to him, and at least once in every month during the season of navigation, and as much oftener as may be necessary, pass over and personally inspect the entire division under his charge. Each superintendent shall be entitled to an annual compensation of \$5,000, in full of all services and personal expenses, to be paid out of the canal revenues, in quarterly payments.

§ 4. The Legislature shall, at its first session after the adoption of this Constitution, and as soon after the commencement thereof as practicable, elect, by joint ballot of the Senate and Assembly, four Superintendents of Public Works, one to hold his office for two years, one for four years, one for six years, and

one for eight years, from the thirty-first day of December, 1867. And thereafter at each general election next preceding the expiration of the term of office of any of said superintendents, a Superintendent of Public Works shall be elected to fill the vacancy, and hold his office for the term of eight years from the 31st day of December next succeeding such election. In case a vacancy shall occur in the office of superintendent by reason of death, resignation, or removal from office, the place shall be temporarily supplied by appointment by the Governor until the vacancy shall be supplied by the Legislature.

The Legislature shall, as soon after the occurrence of such vacancy as may be, proceed, by joint ballot, to appoint a superintendent to hold the office and discharge its duties for the unexpired term. Any of the Superintendents of Public Works may, for good cause shown, be suspended or removed from office, by the Governor, upon the recommendation of the Board of Superintendents, or upon the recommendation of the Commissioners of the Canal Fund, for incompetency, neglect of duty or malfeasance in office. But no removal shall be made unless the officer complained of shall have been served with a copy of the charges preferred against him and he shall have had an opportunity of being heard in his defense. During suspension, the Board of Superintendents may designate some person, temporarily, to perform the duties of the superintendent suspended.

All which is respectfully submitted.

M. SCHOONMAKER,

M. B. CHAMPLAIN,

In preference to majority report.

ABRAHAM B. TAPPEN.

The PRESIDENT—The minority report will be referred to the Committee of the Whole and be printed.

Mr. TAPPEN—As a minority of the committee, I desire to submit an article that we propose upon the subject of the lateral canals. I desire to defer until some future time the statement of the reasons for the article.

The SECRETARY proceeded to read the article reported by Mr. Tappen in words, the following:

The undersigned, a minority of the Committee on Canals, respectfully report the following as an additional section to the

ARTICLE

§ 11. The total annual expenditure upon any lateral canal for collection, superintendence, repairs and management, shall not, from and after the first day of May, 1874, exceed the tolls upon and other sources of income of such canal, including in such income the tolls upon the Erie canal on all property passing from or through such lateral canal, except so far as any of said lateral canals or parts thereof may be necessary as feeders of water to the canals named in the seventh section of this article.

A. B. TAPPEN,

M. SCHOONMAKER,

T. G. BERGEN.

The PRESIDENT—The additional article

reported by the minority and read by the Secretary, will be referred to the Committee of the Whole and be printed.

Mr. SEYMOUR—On behalf of Mr. Bergen and myself, members of the same committee, I wish to say that we differ from the majority of the committee in reference to the appointing the Superintendents of Public Works, and we ask permission at some future day, but very soon, to present our views on the subject, with an article framed accordingly.

Mr. SEAVER, from the Committee on Printing, submitted the following report:

Your committee, to whom was referred the resolution for the printing of two thousand extra copies of the report of the standing committee on "Town and County Officers, other than Judicial," would respectfully recommend the adoption of the following resolution:

Resolved, That there be printed of the report of the standing committee on "Town and County Officers, other than Judicial," etc., recommending an article of constitutional amendment, two thousand extra copies for the use of the Convention.

J. J. SEAVER, *Chairman*.

Mr. ELY—Allow me to say, sir, that the committee recommend the printing of this report in order that it may be sent throughout the State, so as to elicit comments and criticism on the radical changes which are proposed by the committee.

Mr. E. BROOKS—I move to amend the resolution as proposed by the committee, by striking out "two thousand" and insert "one thousand," so it shall provide for the printing of only one thousand extra copies. I wish to say to the Convention, having had some experience in regard to the printing of extra documents, that if we commence upon this system of printing large numbers of these documents upon motion, and deem it necessary to circulate these documents throughout the State, we shall involve the State in an immense expenditure of money. We have been hearing reports read for some three hours this morning; they are to be printed and they are of a very interesting character, but so much of them as relates to local interests will be printed in the respective journals of the State; and I do not deem it necessary for our information or the information of the people at large that this Convention should take action in reference to this extra number of copies, for I know from experience that the amount of money which will be taken from the treasury of the State will be enormous in proportion, and will be beyond the comprehension of gentlemen who have not had experience in that matter.

Mr. SHERMAN—I regard the report, of which it is proposed to print extra copies, as one of the most important which will be presented to this Convention. It contains very many of the elements for the cure of the evils admitted to exist from special, class and corrupt legislation; and on our success in providing a remedy for this evil, will depend more than any other measure the fate of the Constitution we shall adopt. The report should be spread broadcast over the State, that it may be examined and criticised, and for this reason I advocate the printing of the larger number.

Mr. FLAGLER—The gentleman advocates the printing of two thousand copies of this report because we will thus be sowing it broadcast throughout the State. I reply that two thousand will be a very small amount of seed for so large a field, and this sowing broadcast will be done by the public press of the State, and I shall vote against the printing of extra copies. I believe it is not necessary, and I believe, also, if we establish this precedent, it will serve as a precedent for a large expenditure of public money.

Mr. SHERMAN—Allow me to ask the Chairman of the committee, for information, what would be the probable cost of these two thousand copies, my impression is that it would not be a large sum.

Mr. SEAVER—As regards the cost I am unable to say precisely what it will be, but I apprehend the sum will not be very large.

The question was then put on the motion of **Mr. E. Brooks**, and it was declared carried.

The question was put on the passage of the resolution reported by the committee, as amended by the motion of **Mr. E. Brooks** and it was declared lost by the following vote:

Ayes—Messrs. N. M. Allen, Armstrong, Baker, Barnard, Beadle, Beals, Bell, Bergen, Bickford, E. P. Brooks, E. A. Brown, Carpenter, Comstock, Corning, T. W. Dwight, Eddy, Evarts, Fowler, Fuller, Gould, Gross, Hammond, Huntington, Jarvis, Kinney, Krum, Landon, A. Lawrence, Livingston, Loew, Lowrey, McDonald, Merritt, Opdyke, Paige, Pond, Potter, President, Prindle, Prosser, Reynolds, Rolfe, L. W. Russell, Seaver, Seymour, Silvester, Sherman, Spencer, Stratton, Strong, Tappen, M. I. Townsend, S. Townsend, Weed, Williams—55.

Noes—Messrs. A. F. Allen, C. L. Allen, Alvord, Andrews, Axtell, Ballard, Barker, Barto, Bowen, E. Brooks, W. C. Brown, Burrill, Case, Chesebro, Clinton, Cochran, Conger, Cooke, C. O. Dwight, Ely, Endress, Field, Flagler, Folger, Francis, Frank, Fullerton, Garvin, Gerry, Graves, Greeley, Hadley, Hardenburgh, Harris, Hiscock, Hitchcock, Hitchman, Houston, Hutchins, Kernan, Ketcham, Lapham, Larremore, Law, A. R. Lawrence, M. H. Lawrence, Ludington, Masten, Mattice, Merwin, Monell, Morris, A. J. Parker, Rathbun, Robertson, Rogers, Rumsey, A. D. Russell, Schell, Schoonmaker, Schumaker, Sheldon, Van Campen, Van Cott, Wakeman, Wales, Wickham, Young—65.

Mr. KINNEY—I would like, if in order, to ask leave of absence for **Mr. Root**, of Oswego, for one week from to-day, on account of ill health.

No objection being made, leave was granted.

Mr. BERGEN—I would like to ask for indefinite leave of absence for **Mr. Murphy**, who is detained home by sickness.

No objection being made, leave was granted.

Mr. BARTO—I ask for leave of absence for **Mr. Magee** for an indefinite length of time, on account of personal illness.

No objection being made, leave was granted.

Mr. SILVESTER—I wish to ask leave of absence for myself for to-morrow and the day after, on account of business which must be attended to.

No objection being made, leave was granted.

Mr. TAPPEN called up for consideration the resolution offered by him yesterday.

The **SECRETARY** proceeded to read the resolution as follows:

Resolved, That the sessions of the Convention on Mondays commence at half-past seven o'clock P. M.

Mr. GREELEY called for the ayes and noes on the resolution.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was put on the resolution, and it was declared adopted by the following vote:

Ayes—Messrs. C. L. Allen, Andrews, Armstrong, Baker, Ballard, Barnard, Beadle, Bergen, E. Brooks, W. C. Brown, Burrill, Carpenter, Chesebro, Clinton, Cochran, Comstock, Conger, Corning, C. C. Dwight, Eddy, Fowler, Frank, Fullerton, Garvin, Gerry, Gross, Hardenburgh, Hiscock, Hitchman, Huntington, Jarvis, Kernan, Ketcham, Krum, Larremore, Law, Livingston, Loew, Lowrey, Masten, Mattice, Morris, Paige, A. J. Parker, Pond, Potter, Prosser, Robertson, Rogers, Rolfe, A. D. Russell, Schell, Schoonmaker, Schumaker, Seymour, Silvester, Sheldon, Sherman, Strong, Tappen, M. I. Townsend, S. Townsend, Wickham, Young—64.

Noes—Messrs. A. F. Allen, N. M. Allen, Alvord, Axtell, Barker, Barto, Beals, Bell, Bickford, Bowen, E. P. Brooks, E. A. Brown, Case, Cooke, T. W. Dwight, Ely, Endress, Kvarts, Flagler, Folger, Francis, Fuller, Gould, Graves, Greeley, Hadley, Hammond, Harris, Hitchcock, Houston, Hutchins, Kinney, Landon, Lapham, A. Lawrence, A. R. Lawrence, M. H. Lawrence, Ludington, McDonald, Merritt, Merwin, Mouell, Opdyke, President, Prindle, Rathbun, Reynolds, Rumsey, L. W. Russell, Seaver, Spencer, Stratton, Van Campen, Van Cott, Wakeman, Wales, Williams—57.

Mr. COMSTOCK offered the following resolution:

Resolved, That the Committee on the Salt Springs be authorized to hold a sitting at the salt reservation, with power to administer oaths and examine witnesses as they may deem necessary, and that, for the purpose of holding such sitting, the members of the committee have leave of absence from Thursday evening until Saturday of this week.

The question was put on the resolution, and it was declared adopted.

Mr. MERRITT—I have a resolution which I wish to offer, which has for its object the facilitating the business of this Convention, and I hope it will meet with the concurrence of the members of this body.

Resolved, That when the Committee of the Whole shall resume the consideration of the article reported by the Committee on the Legislature, its Organization, etc., debate thereon shall be limited to five minutes to one speaker for, and one against each amendment; and after four hours shall have been thus spent, the vote shall be taken on the amendment then pending, and such as may be offered without further debate, and when the article as amended shall have been reported to the Convention, it shall be immediately considered, and be made the special order for each day, immediately after the approval of the Journal, until disposed of.

Mr. WEED—It certainly seems to me this resolution should be amended. As I stated, when the resolution in relation to the discussion on the report of the Committee on the Right of Suffrage was before the Convention, we have not yet got through the first section, and there are other very important questions in that report, which cannot be discussed and cannot be understood, by discussions of ten minutes in this body. As I understand the resolution of the gentleman from St. Lawrence, he proposes to limit the discussion in this Committee of the Whole, upon this question of the change of the districts of members of Assembly in this State, and upon all the important questions in his report, to one speech of five minutes, on the part of the party moving an amendment, and one of five minutes of the opposite side. It seems to me if this report is to be adopted, and we are to consider it, such a resolution as this should not pass. We have discussed for days the first section of the report. I myself have not taken any part in that discussion, and I do not believe that discussion has been prolonged to an improper length upon the question of the organization of the Senate, and now, at this time, instead of a resolution asking for a vote upon the sections we have discussed at a certain hour, and then to proceed to the other sections—we find a resolution here which compels us to limit the debate upon the other and general questions, to five minutes upon a side. It seems to me it is entirely improper. Of course, if the majority see fit to adopt such a resolution, we have but to submit; but it does seem to me, if the gentleman appreciates his report and its importance, there should be a graduated scale, and we should have twenty minutes, certainly upon the organization of the Assembly, for a short time at least, so that a man voting upon the subject could understand it properly, or give some reason for his vote. One other reason why I think we should not adopt the resolution—we have had no sort of intimation from the chairman, or the committee he represents, why he makes these changes; there was no written report from that committee giving the reasons for these changes, and I defy him or any other gentleman to give satisfactory reasons in five minutes, and I say it is a shame to try to limit the opposition to that report, or to any section, to a reply of five minutes.

Mr. M. I. TOWNSEND—I hope the resolution will not be adopted. Eminent courtesy has been extended to the gentleman from St. Lawrence [Mr. Merritt] to enable him to speak once, twice, thrice, or as often as he pleased almost, with regard to so much of the report as has already been discussed, and I think it comes—my friend will pardon me for saying it—with an exceedingly ill grace from him now, to propose to limit this discussion as proposed by this resolution. For one moment let us look at the position in which we shall be placed. The individual who happens to catch the eye of the Chair, who has the readiest voice and the quickest spring, and gets upon the floor and speaks for or against any proposition, he is to embody the whole mind of the house that can be brought to bear upon the subject that happens to be under discussion; and the individual who succeeds in getting the floor

next is to speak for the other side of the question. The great body of the Convention might as well have staid at home if this is to be the way things are to be done, and have let the committees come here and nobody else. I hope this Convention will allow discussions upon subjects we have now before us, that are among the most important that can be discussed in this Convention—the representation of the people of the State in the Senate and Assembly of the State.

The hour of two o'clock having arrived, the Convention took a recess until half-past seven o'clock.

EVENING SESSION.

The Convention re-assembled at half-past seven o'clock.

Mr. ALVORD—I desire to move a reconsideration of the vote by which the Convention determined that upon every Monday they would meet at half-past seven o'clock P. M., instead of every alternate Monday, as under the former regulation.

The motion was laid over under the rule.

The PRESIDENT announced the pending question to be on the adoption of the resolution of Mr. Merritt.

Mr. M. I. TOWNSEND—I do not desire to extend my remarks upon the question before the Convention. I had stated that we had one very important question that we had not discussed at all, the question, that is, the mode of electing our members of Assembly or the popular branch of the Legislature, and that certainly we should need more time than was proposed by this resolution. I do not believe we need be in a hurry about it at the present moment, because I think the right of debate has not been abused, and that we shall get through it without any difficulty if we go on with the business. So believing, I move to lay the resolution on the table.

The question was put on the motion, to lay on the table and it was declared carried, on a division, by a vote of 58 to 22.

Mr. FOLGER—But eighty votes are cast; there is not a quorum voting.

Mr. BARNARD—The President has not voted; his vote will make up a quorum.

So the motion was declared carried.

Mr. MERRITT—Is it proper for me to withdraw the resolution?

The PRESIDENT—It is; no action has yet been taken.

Mr. MERRITT—I withdraw the resolution and offer the following as a substitute:

Resolved, That, unless debate shall sooner terminate, the Committee of the Whole shall, at one o'clock P. M. to-morrow, rise and report to the Convention the reported article from the Committee on the Organization of the Legislature, etc., with all the amendments made in the Committee of the Whole, and that the said report of the Committee of the Whole, with amendments offered and to be offered, shall be immediately considered and be made the special order for each day, immediately after the approval of the Journal, until disposed of.

Mr. ALVORD—I am in favor, as much as the gentleman from St. Lawrence [Mr. Merritt], or any other gentleman on this floor, of expediting

the business of the Convention; and I will go in favor of the proposition if the gentleman will reduce it into form so that there shall be debate upon each one of the sections in this article, that debate to be longer or shorter, as the interest of the article may indicate; and the speeches in regard to the matter shall be limited to a time certain, so that in the aggregate of the time there shall be a fixed time upon which we can come out of Committee of the Whole, with the privilege, in each individual case, when upon each section, the amount of time shall have been consumed in debate, there shall be opportunity of laying on the table of the committee amendments to the proposition without debate, and that the vote upon the incoming of the matter in the Convention shall be taken with debate, if the Convention see fit, and without the interposition of any amendment other than has been before the Committee of the Whole. In this way a fair examination of the article under consideration will have been had, and we shall have been enabled to speak to each and every section. But under the arrangement of the proposition of the gentleman as it was on the report of the Committee on Suffrage, we never got beyond the beginning in the Committee of the Whole and we merely double the work on it, so that in fact, in Convention, as well as in Committee of the Whole, we double the labors of the investigation of the different matters connected with the report. Now, my idea, and I think it is according to the strict parliamentary practice which has been had heretofore, in regard to these matters, and will facilitate business, is to determine in regard to each section, how much time shall be employed in Committee of the Whole giving opportunity for all amendments that may be necessary, ending with the aggregate of time thus employed upon the bill in Committee of the Whole, and on which they shall conclude their labors; so they will be enabled to report affirmatively upon each and every proposition, and then come into the Convention. The Convention, under a previous rule, if they desire it, have entire control of the matter, confining the action of the Convention, so far as the amendments are concerned, directly to matters which have been proposed in Committee of the Whole. This manner of proceeding will facilitate business in regard to this matter; and if adopted in regard to every one of the bills before us, will very much shorten the time of our labors.

Mr. MERRITT—I only desire that the committee shall conclude discussion upon this article. I regret exceedingly y—

Mr. M. I. TOWNSEND—Why not go into committee now for the next hour and a half for discussion on this question?

Mr. MERRITT—I regret exceedingly that by the offering of a resolution looking to the facilitating of business in this Convention I should so disturb the ordinary peaceful and quiet and lamb-like gentleman from Rensselaer [Mr. M. I. Townsend]. I regret exceedingly he should be so disturbed. The only desire of the committee is to facilitate business, and any mode that will tend to that end will meet our hearty concurrence. We do feel to a certain extent responsible for urging forward action upon this report. All the

committee desire is to relieve themselves from that responsibility. Now, we must have a conclusion some time. The gentleman from Onondaga [Mr. Alvord] in his remarks pretended to say how it should be done, but he failed to offer any proposition which might effect this end.

Mr. ALVORD—I merely wish to suggest to the gentleman that I will draw up a resolution if he desires, but I supposed it should come from the committee, rather than from me.

Mr. MERRITT—Under the existing rule when we come into Convention, debate will be allowed *pro* and *con*, by two persons five minutes upon each proposition. I understood some gentleman here who was in the minority, intimated that it would be well to limit the debate in Committee of the Whole for the purpose of going over this article. It was with that view that I proposed we should limit the debate in the Committee of the Whole to twenty minutes to each proposition; after that, when it comes into Convention, there will be five minutes for two persons, who wish to speak on amendments to the proposition. It seems to me we must have some limit. Upon putting this motion I call for the ayes and noes, for the purpose of relieving the committee, at least, of the responsibility for delay.

Mr. SCHOONMAKER—I move to lay the resolution on the table.

Mr. GREELEY—I ask the ayes and noes on that.

Mr. FOLGER—I move the previous question upon the adoption of the resolution, and I suppose that will take precedence of the motion to lay on the table.

The PRESIDENT—It does take precedence. The question is shall the main question be now put?

Mr. E. BROOKS—Before the Chair puts that question I submit, as a point of order, unless we have a rule that is not within my own mind, as a member of the Committee on Rules, that even after the previous question is moved, before there is a second, it is in order to lay on the table.

The PRESIDENT—The Chair does not so understand the rule.

The question was then put on the motion for the previous question, and it was declared carried.

The question was then put on the adoption of the resolution offered by Mr. Merritt, and, on a division, it was declared lost by a vote of 26 to 60.

The Convention then resolved itself into the Committee of the Whole on the report of the Committee on the Legislature, its Organization, etc., Mr. FULLER, of Monroe, in the chair.

The CHAIRMAN—The pending question is upon the amendment offered by way of substitute by the gentleman from Albany [Mr. Parker], to the amendment of the gentleman from Richmond [Mr. E. Brooks], as amended upon the motion of the gentleman from Cortland [Mr. Ballard], in committee.

Mr. A. J. PARKER—I ask that the question may be divided on the first part of the proposition, and voted upon separately.

The SECRETARY read the first proposition as follows:

Sec. 2. The Legislature for 1868 shall divide

the State into eight senate districts, to be numbered from one to eight inclusive, each district to contain, as nearly as may be, an equal number of inhabitants excluding aliens. No county shall be divided except it shall contain a greater population than is necessary for one senate district.

Mr. HATCH—That has been voted down practically, once.

The CHAIRMAN—I think not. The question is on the first part of the amendment.

Mr. VAN CAMPEN—There has been a good deal of discussion upon the question upon which we are now about to vote—the question between single districts and large districts. The ground has been pretty thoroughly gone over. Gentlemen on both sides have assumed their positions with a great deal of confidence. I might satisfy myself if I voted “yea” or “nay” on the proposition. But as the question is one of so much importance that it underlies the whole system of our government, and the arguments which have been adduced here are of that character, in my opinion, I therefore take this occasion to express my entire dissent, not only from the proposition, but from the arguments which have been offered in support of it. In my opinion, if there is any one principle that is, or should be well settled, it is the principle of single districts. For the purpose of this discussion it has been conceded that the Legislature should be organized with a Senate and Assembly. For the further purpose of this discussion it has been conceded that an Assembly should consist of about 128 members, a little more or a little less; that the Senate should consist of 32 members. If those questions are conceded, in my judgment the work of this Convention upon that question is settled. The balance of the work becomes a logical conclusion established upon these premises. If we have settled that 105,000, electors in this State are entitled to one member you have settled the whole question. All that is left to this Convention after that, is the apportioning of these districts, contiguity of territory, contiguity of electors, the creation of counties, and the subdivision of counties into political divisions of the State. The arguments offered here in favor of large districts astonish me. If they prove anything at all what do they prove? They prove us incapable of self-government. When I return to my district I must say that the arguments we offered here were such, that if they went to establish anything, they established the fact that the people of my district are not able to determine who shall represent them in the Senate. I can say nothing else than that it is a proposition to take out of their hands by indirection what no man dares attempt directly; and to do by circumlocution what they dare not propose by direct terms to accomplish. That is what it is. It is no more, no less, than that. I respect talent; I respect learning; I respect dignity, and I remember in my boyhood days of standing in the Senate and listening to the addresses of gentlemen who addressed that Senate, not only as counselors, but as gentlemen who discussed a question as in a court of errors with measured sentences and cadences. They impressed me in such a way I have never forgotten

it. It must not be forgotten that in regard to the Senate of this State the characters of these gentlemen present a picture that is one-half of the history of the State. I admit they are characters to be revered and respected. But do gentlemen expect to return to a system by which those characters were sent here? Do they expect to have a Senate which is elected by the property holders only? Are they looking for a conservative body elected by the tax payers only? I imagine the body they are looking for can only be obtained in that way. Do they propose to go back to that system? No gentleman proposes in terms to do that. But I suspect, if they were to avow their real sentiments, they would say they would be willing to return to that if they could.

Mr. BARKER—Will my colleague allow me to ask him whether he has heard any gentleman suggest that?

Mr. VAN CAMPEN—I would be glad if the gentleman did not put his question so directly, because the answer might implicate some gentleman on this floor.

Mr. BARKER—I apprehend any gentleman will excuse my colleague.

Mr. VANCAMPEN—It is claimed here, you should elect men that would not be influenced by minor considerations. I ask if you can correct that evil by electing them from a district as large as our judicial districts? Not at all. Any gentleman familiar with the machinery that is used in making nominations will tell you, you cannot correct the evil at all. It necessitates this thing; it establishes a central clique, and all nominations are figured out by that central clique, and any gentleman who wants a nomination will have to apply to that clique. It is no new thing. It is done already; what would be the result of it? Mr. A., who wants a nomination in another district, would propose himself to the central head, and the real effect would be in my district, the Buffalo Express would tell us who wanted to be nominated here not there, or *there*. That is the way the system would work. The whole work would be laid out by the central head, and very likely as it was laid out it would be done. What were the arguments that were used in favor of the large district system? They were that it would make the Senator independent of the elector. It was in effect to make the servant independent of his master. It was to make the representative independent of the persons he represented. Now, we think a great deal of independence in the district where I live; but we do not think much of that kind of independence. It is not the kind we are after. If we have any servants we want them directly responsible to us. We do not want a divided responsibility; we do not want any Mr. A. or Mr. B., who will say, it is not my fault, but Mr. C.'s fault. We think we are capable of sending a responsible representative. If we are not, it is our own fault. We do not ask you to sympathize with us, we do not ask your interference at all, in providing a system of furnishing us with candidates. Now, you cannot procure talent, you cannot procure dignity, you cannot procure ability in any greater degree in a large district than you can in a small district. You cannot overcome local minor considerations

in that way. It is only by putting the responsibility upon each of the districts and allowing them to select their men and making them responsible to that district. Then they will be faithful to the district if they are vigilant, because the old maxim is none the less true now—"Eternal vigilance is the price of liberty." What is it that produces the corruption charged in this Legislature? I am not here as an accuser, but it is said very great malfeasances obtain here in this chamber and the other, that are chargeable to the single district system. No, sir, they are chargeable to other causes. There were vicious provisions in the Constitution, and they have brought forth their fruits. Sir, it is the mammoth corporations that have grown up in this State that, among other things, have produced corruption here. It is the franchises they have sought here that have brought hundreds and thousands of dollars to corrupt this legislation. Gentlemen come here seeking to obtain franchises by which they can put fortunes in their own pockets. It is a well known fact that these corporations were here for that purpose, and those men who come here for the purpose of seeking their own profit and gain, think it perfectly proper to rob these corporations if they can do it. That is the principle that has manifested itself here. The whole system of provisions in that Constitution, save these single districts, have operated to produce that corruption. The system of canal management in this State, and the canal claims that have been put through here at five times their value, has corrupted the Legislature. I appeal to this Convention that the statements that have been made are not true, and if, from their own observation and the common sense of this Convention, they are not convinced that the arguments I have given are true. I object to having the large district system foisted on us by false inferences. I object to gentlemen attaining an end by circumlocution that they dare not attain indirectly. I cannot go home to my constituents permitting such a measure to pass without raising my voice against it. If it does pass, I cannot go home to my constituents and advise them to submit to it, because it is based upon arguments impeaching their integrity and their capability to manage their own affairs.

Mr. MERRITT—I would like to ask the gentleman a question. I would like to know how lately he has heard from his constituency, because I understood him to indorse this report, and I am happy to say to cordially indorse it.

Mr. VAN CAMPEN—The gentleman's statement is true, but I am very happy to say that I have arrived at the conclusion which I give to you to-night after full consideration. That is the answer I have to make to the gentleman. We must not pass upon a question fundamental to the interests of this State without a thorough analysis of all the propositions involved in it. This is a government for the people and of the people. I have not lost confidence in the people. I trust every step we shall take, we shall go forward intimating that we do trust in the people. I protest against these imputations that it becomes necessary to go in any other way to the people for these nominations, except in the most simple and direct manner, for provisions that are

most simple and direct, to accomplish the objects for which we are here. Except that the State of New York is a large property holder, our duties would be extremely simple here. The fact that the State has one of the most valuable properties on the globe creates the necessity and puts duties upon us that are outside of the ordinary functions of government. We as a State have departed from the simple functions of government; and whether wise or unwise it is not necessary to discuss now, but such is the fact. The questions growing out of that fact are such as are before us to-day. The question of the representation very properly belongs to the simple functions of government. While I go for giving those things to the people to allow them to act directly upon them, I am in favor of strengthening the Executive. I therefore am willing to incorporate the provisions which are precautionary in their character, and which, in their effect, must act in a conservative way to the extent that States are willing to incorporate such provisions with reference to the Executive. That is the place to get your conservative influence. The time has gone by for you to get it anywhere else. You cannot do it. It is among the things that are past; oblivion is over them. It only astonishes and surprises me that gentlemen should come here and propose to return to what has been so thoroughly condemned. I remember the condition of things existing under the old system. They are not new to me; they have not passed out of my recollection. If any political folly could be committed by this Convention it would be returning to that system.

Mr. BELL—I am not a little surprised at the turn this debate is taking. I had hoped when the gentleman from Richmond [Mr. E. Brooks] rose to a point of order, claiming that this was an equivalent question to that settled by the amendment of the gentleman from Cortland [Mr. Ballard], that the Chair would so rule, and that we would have passed over the point of large or small Senate districts and discuss some other section in the report. I have never been in the habit of making a factious opposition when debate was closed and the question fairly taken and I was found to be in a minority. I do not see the propriety of the majority—those who voted for the small districts—opening this discussion. I was among those, sir, that favored large senate districts, and gave my reasons for so doing; we approached a vote last evening, and the vote was largely in favor of the small senate districts, and with that I am content. I submit to the majority in all cases, but I do not see the propriety now of discussing this question and discussing this same proposition any longer. I had relied on many gentlemen who came to me, and with whom I had conversed, to sustain the large districts. Many of my democratic friends were in favor of the large districts; they talked for the large districts, but they voted for the small ones, and I do not think that we should now endeavor to change that vote. If they have sought to effect party purposes by it, as far as the republican party is concerned certainly they are not to be injured in the matter; they certainly have an opportunity of choosing as many Senators by the small district system as

they had by the large district system, but I was not confining my action to any party purposes, and I do hope if any party seeks party advantages in this Convention that they will be disappointed, and I prophesy they will be disappointed. I have no such desire. Now, I am of the opinion that the question of senate districts was settled last evening; I do not see the propriety of passing over this same discussion and consuming the time of this Convention by precisely the same propositions; I do not think any further useful information can be obtained on this subject. I had said in the commencement of my remarks, that I hoped and had reason to believe when the gentleman from Richmond [Mr. E. Brooks] raised the point of order, claiming that this was an equivalent question to that decided last evening, that the Chair would so recognize it. I will now raise that point of order.

The CHAIRMAN—The Chair is of the opinion that the amendment of the gentleman from Albany [Mr. A. J. Parker] is in order as a substitute for the amendment made by the proposition of the gentleman from Richmond [Mr. E. Brooks].

Mr. GOULD—Is it in order to offer a new amendment now?

The CHAIRMAN—The Chair is of opinion that it is not in order, there being two amendments now pending.

Mr. HATCH—I rise to a point of order.

Mr. ALVORD—I rise to a point of order, that the gentleman [Mr. Hatch] is not in his seat, and, therefore, is not recognizable by the Chair under the rule.

Mr. HATCH—I am in my seat for the present, with all due deference to the gentleman. I raise the point of order that the proposition now made by the gentleman from Albany [Mr. A. J. Parker] is practically the same proposition that was voted down last night.

The CHAIRMAN—The Chair has already decided that point, that it was a different proposition.

Mr. HATCH—Then I appeal from the decision of the Chair.

The question was put on sustaining the decision of the Chair, and it was declared carried.

Mr. GOULD—As there are two amendments already pending, I will, sir, with the permission of the Convention, read an amendment which I design at the proper time to offer as a part of my remarks, as follows:

“No person shall be allowed to vote for a Senator who has not paid a town, county or State tax within twelve months next preceding the election at which he offers to vote.”

Now, sir, I suppose in the discussion of questions of this character—

Mr. FOLGER—Is that offered as an amendment?

Mr. GOULD—I read it as a part of my remarks, and intend to offer it at the proper time. Now, sir, in my opinion, all laws both statutory and fundamental must have a legitimate genesis. There is a law above all laws which dominates the growth of customs and the enactment of statutes. Sir, the ancients had this idea, dimly, vaguely and mistily as was expressed by the “*Jus Gentium*” of the Romans; but it seems to me, sir, that there is a nobler origin for this. It seems to me that God,

when He made mankind, ordained rules and regulations, which should regulate their connections and intercommunications with each other, and if we shall be enabled to ascertain those laws we shall have the best security for the formation of sound constitutional provisions. Now, sir, if we examine the history of any statute we shall find that the law maker, in the making of that statute, was coerced by facts and circumstances into the adoption of its provisions, and that in every case they were preceded by such measures of coercion. If we examine the feudal laws, which are now terms of opprobrium among us, we find that they had a legitimate genesis. Those laws were produced by a feeling of insecurity on the part of the governed which engendered an absolute necessity for protection, and so long as that necessity for protection existed, that protection could be afforded no other way than by the strong military chieftains who had the will and the ability to protect their liegemen but no one else. That law was proper; that law was in conformity with the higher law, which, as I have said, dominates all constitutional provisions and the enactment of all laws. But, sir, when new forms of protection were ascertained, when better modes of protecting individuals in their rights and property were discovered, then precisely the same law which originally coerced the enactment of the feudal law enacted its abolition. So, sir, slavery in its inception was a merciful institution; the laws of slavery were undoubtedly in accordance with the divine laws, for slavery had its origin in war; as it was formerly the custom to destroy the lives of all who were taken prisoners, it was certainly more merciful to spare their lives and keep them in slavery. When by the growth of better feeling among mankind there was found a nobler principle spreading itself abroad and ruling the conduct of men, that very same law which first originated slavery, that higher law required its abolition. Thus, slavery and its abolition were both the legitimate results of the same law of mercy. Now, sir, if there are general laws which govern all constitutional provisions, it seems to me that it is proper for us to inquire which of those general laws regulates the establishment of legislative bodies. It is easy to see that one of these laws requires that all the interests of the community that are represented shall have their proper representation in the legislative body. Sir, there are fishermen, mechanics and farmers, and there are merchants and there are persons of various trades and occupations, all of which require a proper representation. The fishermen frequently require legislation; they require that those who live in other States shall be restrained from trenching upon their privileges, and it is absolutely necessary for them to have some one in the Legislature who is in sympathy with their rights, who understands the peculiar technical language which they use, and who shall be able to translate that technical language for the members of the Legislature. So mechanics have a technical language, and they too, require that they shall have persons here who are familiar with that language, and in sympathy with their interests. Why, sir, if the technical language of a mechanic was

used in this House, such as "arbor," "slot" and "feather," "gag" and "journal," very few of the gentlemen here would understand what they meant. It is, therefore, necessary that they should have representatives on the floor who can interpret their meaning and translate their peculiar language into the general language which is understood by all intelligent men. So, sir, another law is, that men of different casts of character shall be introduced into the Assembly. The old have experience, and they have the prudence which flows from it. The young men are ardent and enthusiastic; they are full of hopes, but they are apt to confound the ideal with the real, and from the very formation of their minds, they are well adapted to carry forward the car of progress, which makes the nation go on from step to step in its career of glory and usefulness. The man of business, too, has a peculiar habit of mind; by his very occupation he has cultivated his powers of observation in such a way as to arrive at a very great rapidity of action, while the student, on the other hand, looks upon subjects with a microscopic vision and is slow and careful in his calculations. It is necessary that the legislative body—

Mr. HUTCHINS—I rise to a point of order. That I am unable to hear a word the gentleman utters, I hope we shall either adjourn, or that we shall be held to order while we are in Convention.

The CHAIRMAN—The point of order is well taken. The Chair trusts gentlemen will avoid discussions in a loud tone, in the chamber.

Mr. GOULD—All these habits of mind and all these classes of individuals must necessarily be incorporated into a legislative body, which shall adequately reflect the popular views, feelings and interests. These classes of mind are never found in any instance combined in a single individual, but they may be harmoniously blended in a legislative body, so that all these various characters can be brought to bear upon the elucidation of questions presented for discussion in a way to enable the body to arrive at sound and wise conclusions. In fact no intelligent conclusion can be reached in the absence of these things. It follows, therefore, that that scheme for the constitution of a Legislature which makes the most perfect representation for all these interests, and for the bringing together of all these different casts of character is on the whole the most perfect. But, sir, it is obvious that all these that I have already mentioned may be amply provided for in a unicameral Legislature. We find that where governments have originated in unicameral Legislatures they have almost invariably (and indeed I may say invariably, without the qualifying adjective) resulted in a bicameral arrangement. We find this was the case in Athens; originally, there was a Senate, and the government was lodged in that single Senate. But in the days of Solon the difficulty of a single legislation began to be apparent, and by slow gradations the assembly of the people was introduced and they took part in greater numbers by successive steps in legislation, until at length in the days of Pericles the popular assembly of the Agora was fully established upon firm

foundations as a branch of the legislature, and bicameral arrangements were thus established. So it was in Rome; the Senate was originally the single legislature of Rome, and it was found that the difficulties of government were so great, and the confusion of interests was so very bewildering in that city that by slow degrees and imperceptible gradations the tribes acquired more and more power, until the *comitia tributa* was recognized as a regularly established chamber of legislation, and no laws could have any validity that did not have the assent of both of those bodies. Sir, when a vital cell is first formed it is a single body, but when we watch it under the microscope for a little time a constriction takes place in the middle and it gradually grows greater and greater until the cell is finally divided into two parts. This exactly expresses what has been taking place in our legislative arrangements. If they have begun with a single body, they have always ended in the establishment of two bodies in the Legislature. If we inquire into the causes of this spontaneous division, we find that national life springs from the interaction or the antagonism of opposing human interests; and these interests gradually and naturally group themselves around two distinct centers, which are called the rights of persons and the rights of property. They arrange themselves naturally and gradually into those two distinct divisions. Laws, like persons, must spring from a dual origin; they must, like human beings, have a father and a mother; they must be the resultant of two forces, not necessarily antagonistic, but *different*. For instance, sir, the plant is nourished by the combination of earth and moisture. It is not nourished by earth alone or moisture alone, but by a combination of the two. Fruit has its genesis out of the pistil and the stamen. Neither one is sufficient to produce it. Salt has a double origin. It is formed in all cases from acid with a base. The acid itself has a double origin. It is formed out of the combination of oxygen and acid. So in vegetables, animals and organic forms. Everywhere and in every case all things have a dual origin. Legislation is no exception to this general law, but if we desire to bring forth fruits beneficial to the people we must provide a legitimate parentage; they must spring from two chambers, one of which represents the rights of property and the other the rights of persons. All the bicameral arrangements in Europe are based upon this principle, and the only fault with those arrangements is that they do not perfectly and adequately represent them. The House of Lords in England represents persons, and the House of Commons represents the property of the nation. But, sir, the fault of the Constitution of England is that the House of Lords only represents one single class of persons. Its fault is that it does not represent *all* the persons of England. So it is in France, and in every Legislature of Europe and South America. Our own Congress has this double origin. The Senate of the United States represents the corporations of the States themselves, and incidentally represents property, while the House of Representatives is properly a representation of persons. Now, the misfortune of our present Constitution is that it adopts the

bicameral arrangement without adopting the reason upon which that arrangement is founded. It is the shadow without the substance. It is the name without the thing. The gentleman from Oneida [Mr. Kernan] complained the other evening that our Legislature, as at present constituted, was only a great and little assembly; that it represented precisely the same persons, and did not represent any distinct interests whatever. This complaint is eminently just. We might as well attempt to produce fruit from the union of pistil with pistil, or stamen with stamen, as to produce good legislation from bodies thus constituted. Vast evils have resulted from this bicameral arrangement of our Legislature, and although the rights of persons are the only rights which are represented either in the Senate or Assembly, those rights of persons have not been as well represented as if there had been a representation of property in one chamber established by the Constitution, and the rights of persons and property both had been honestly and equally represented. We have seen most vehement and persistent efforts made by democratic members on this floor to deprive 11,000 negroes of the elective franchise. These gentlemen are neither knaves nor fools. They know perfectly well that the color of the skin is not a proper foundation for the rights of franchise, but these gentlemen have felt, sir, as the other side of the question do not feel, that there is danger to the rights of property in the city of New York by the large introduction of aliens into it; there is that danger, and they have a real fear that even 11,000 negroes introduced into the voting will add too much force to that side, and that there will be a real danger to the rights of property. But if you give to property a negative power in the legislation of this State all dangers of this kind pass away at once. If there is one body which can adequately represent the interests of property then the danger of agrarian and destructive legislation is entirely avoided. You may introduce as many aliens and negroes as you please, and no danger whatever will threaten to destroy or jeopardize the right of property. This is a consideration which ought to occupy our earnest attention; we ought to give it a careful, candid, and intelligent consideration, whether we are not in duty bound to take away this disturbing element from us and bring back peace and quietness to our Legislature, and thus calm those fears that are now so rife in the bosoms of gentlemen. Once establish this principle, and our democratic friends will cease their opposition to the introduction of negro voters, as some gentlemen on the other side will cease their fears with regard to the introduction of alien voters. Persons will all be represented, and the republican law will be carried out to its utmost degree of perfection. I would oppose with all my power the withholding of the franchise from any individual whatever. I would have persons represented in the fullest degree and to the widest extent; and in one part of the Legislature I would give a similar protection to property. Then you will find all these heart-burnings will cease, and the rich and the poor, the alien and the negro, will go on harmoniously together. Stripping the subject of the mists which demagoguism has thrown

around it, every man who thinks candidly on the subject will admit that he who actually pays the taxes has a stronger right to control the expenditure of them than he who does not. The amendment therefore commends itself to the sense of natural equity. The amendment will prove a more effectual estoppel of the bribery and corruption which have been so much complained of than any of the stringent oaths which have been provided in the article on suffrage. The Senate will have a more natural sympathy with the tax payer, and a greater sense of responsibility to him, than the present Senate or Assembly. This amendment will give to the farmers of the State a relative power greater than that of the cities. The farming population being stationary while the cities are rapidly increasing, the latter will eventually overwhelm the former. This can never be desired by the patriot or the statesman, who have always, in all nations, considered agriculture to be the basis of national prosperity, and farmers as the most trustworthy depositaries of political power. Correct and safe conclusions are more generally reached when the facts on which they are founded have been slowly and patiently examined, and their mutual relations carefully traced out. This requires a habit of keeping the mind closely in contact with a given topic. Sir Isaac Newton declared that his wonderful discoveries were more owing to this habit than to any other quality of mind. From the very nature of their occupations farmers acquire the habit, at the plow, at the harrow, in the hay field, the farmers quietly revolve the public questions of interest in their minds, and like their oxen they chew the cud until all its flavor is extracted. It is not so with citizens of a crowded city, their studies of public questions are hasty, irregular, and fragmentary, they hastily consider one point of a subject, and decide the whole subject by their decision of the single point. The farmer must, therefore, from his habits and occupations, be a safer repository of political power than the citizen. They are more exempt from corrupting influences than the inhabitants of cities, and they are less migratory in their habits. Another great advantage will flow from this amendment, it will add to the number of tax payers. There are about three hundred and eighty thousand persons taxed for the ownership of land, and those who will be taxed for personal estate will swell the number to five hundred and fifty thousand voters. These, sir, are some of the reasons that have influenced me in offering this amendment, and I only regret that the time allowed me will not allow me to develop them with greater fullness, and to illustrate them in a clearer manner.

Mr. MONELL—The vote which I shall give upon the amendment of the gentleman from Albany [Mr. A. J. Parker] may seem to be inconsistent with my presumed assent to the report of the Committee on the Organization of the Legislature which is now under consideration in this committee, unless I state the reasons which influence my concurrence with such report. The chairman of the committee correctly stated, a few days since, that the committee, with a single exception, was unanimous in the opinion that it was best to recommend adoption by the Convention. the plan

for the organization of the Legislature provided by the Constitution of 1821. I believed at the time and I believe now, sir, that a better Legislature would be secured by adopting the plan provided by the Constitution of 1821 than by the plan adopted by the Constitution under which we now live. That plan provided for a division of the State into large senatorial districts, and the election of members of Assembly by counties. To that extent the committee was unanimous, and I am still of the opinion that a Senate organized upon that plan would be preferable to a Senate organized on the small district plan. A reason which, perhaps, had no influence with the other members of the committee had its effect upon my mind. We heard in the early session of this Convention from gentlemen, not officially but conversationally, that the powers of the Legislature were not to be enlarged. On the contrary, that the powers of the Legislature were to be greatly abridged and limited. It was said that the Legislature were to be confined to the enactment of general laws, and were to be prohibited from the passage of any private or special charters. And, sir, in furtherance of that view, we find that one committee has already—I allude to the Committee on Corporations other than Municipal—reported a section for the consideration of this Convention prohibiting the Legislature from passing other than general laws for the incorporation of individuals. We were also told in the early session of the Convention that local legislative powers would be conferred upon local bodies, alluding, I suppose, to boards of supervisors, and we find that the Committee on Counties and Towns, who reported a day or two since, have also recommended for the consideration of this Convention a provision conferring upon the boards of supervisors local legislative powers which the Constitution will define and fix. Now, sir, if this is so, and this Convention shall finally adopt these provisions recommended by these committees, and other similar provisions, and that the powers of the Legislature shall be confined to general legislation, and they shall be deprived of the power of local legislation, it is a matter of small consequence whether the legislator comes from one section of the State or another; whether the member of the Senate comes from the eighth or first senatorial district; whether the member of the Assembly comes from Cattaraugus, Clinton or New York, in each case he will legislate for the people of the State at large, and not for any local constituency. That, sir, if it be true, will entirely do away with this entire idea of local constituency; there will be no longer any local constituency to be represented; the Legislature will be confined to the enactment of general laws and prohibited from the passage of any special laws, and the legislator will necessarily represent the entire people and no particular section of the State. The subject of dividing the State into districts in the early meetings of the committee was briefly but not much discussed. The committee at that time with much, if not entire, unanimity agreed that it was wise to devolve that duty upon the Legislature and not to assume it by the Convention. At a later period and within a few hours of the submission of their report

upon the suggestion of the chairman of the committee it was deemed practicable that some plan of division of the State into senate districts should be presented to the Convention, and that being assented to by the members of the committee, the duty was confided to one gentleman, and he prepared the division of the State into senatorial districts, which subsequently, with the assent of the committee, but without examination, was incorporated into the report, but upon the understanding that no member of the committee was to be concluded or bound by it; and in this remark I am corroborated and borne out by one member of the committee. I allude to the gentleman from Ulster [Mr. Cooke], who a short time since proposed that when the proper time arrived he would submit a new and different plan for the division of the State. Since the submission of that report I have with some care examined the figures upon which it was predicated, and I am satisfied, upon that examination, that a great wrong; if that plan had been adopted by the Convention, would have been done to that portion of the State which I have the honor in part to represent. That plan of division was predicated upon the enumeration of 1865, and it is enough, I think, for me to say that that enumeration had been condemned as being utterly unfair and unjust to the city of New York. But even assuming it to be correct, the large fraction which is given by it to the city of New York is sufficient to entitle her to another Senator. Independently of that, the large increase of population in the city of New York since 1865 has been entirely ignored or overlooked by the committee. We all know that the population of the city of New York has increased ten if not fifteen per cent within the last three years, and such increase will go on until 1875 before there can be any increase of representation in the Senate from that city. Now, Mr. Chairman, under these facts and circumstances, if I had been present when the vote was taken on the original proposition contained in the second section of the report of the committee, I should have felt authorized, with the understanding I have mentioned, and should have conceived it to have been my duty, to have voted against the entire section unless the subject could have been divided. Mr. Chairman, a word or two in regard to the amendment proposed by the gentleman from Albany [Mr. A. J. Parker]. I have heard, sir, no explanation in regard to that section. I was not in my seat at the time it was introduced in Committee of the Whole; but there is one objection to it which is sufficient to authorize me not only to oppose, but to vote against it. It renders it possible, nay, indeed, it renders it probable, that the city of New York, as a senate district, must be divided, and that a portion must be attached to adjacent territory. I have been at all times opposed to a division of a county in arranging senate districts. It is not possible under the plan proposed by the amendment of the gentleman from Albany [Mr. A. J. Parker] to provide a representation from the city of New York without dividing it, and attaching a portion of it to either the county of Kings, Westchester, or Richmond. That is one objection which presents itself to me to the proposition of the gentleman from Albany [Mr. A. J. Parker].

I have not heard any explanation of the details of the amendment, but I can conceive a serious difficulty in carrying it into execution; which difficulty was well stated by the gentleman from Westchester [Mr. Greeley] in the course of his remarks the other day on this subject; namely, that it would inevitably lead to the defeat of the entire scheme by reason of the election in strong democratic districts of the entire democratic ticket, and in the strong republican districts of the entire republican ticket. Until, therefore, I have heard something that may satisfy me that the amendment is feasible, and that it can be carried into execution so as to be effectual in all parts of the State, and leave the city of New York undivided in its territory, I shall oppose and vote against it.

Mr. M. I. TOWNSEND — Although I have spoken on the main question in this case, there is one consideration that presents itself to my mind that I think it my duty to present this Convention. I should vote for the proposition of the gentleman from Albany [Mr. A. J. Parker], if we must have quadruple districts or treble districts, if there were any hope of the republican party in the city of New York being represented in the Senate of the State under the proposition of the gentleman from Albany [Mr. A. J. Parker]. But it has been well said here that the democratic party in the city of New York is sufficiently strong to run two tickets and certainly secure the election of one of them over the entire vote the republican party could bring to the polls, so that the republicans of the city of New York would have under that proposition no representative in the Senate. I propose especially to present, through the chairman, to my republican friends in this Convention, a consideration which has not yet been presented, and I do it the more anxiously because some of my republican friends in this Convention, of more mature age and experience than myself, have come to look with somewhat of distrust and dissatisfaction on the course I felt it my duty to pursue in regard to single districts. In 1864, at the last senatorial election in this State, the republicans carried four of the eight senatorial districts below the Highlands. They elected four Senators in the territory which the committee has proposed to consign to endless night. They have now in the Senate of the State one-half the representation that is proposed to be given directly and *en masse* to the democratic party. And, sir, if there is nobody else to speak for this region of the State, as they did me the honor to give me their votes, I wish to protest against the arrangement of districts in such a manner as to forever settle the question, that no republican below the Highlands can ever sit in the Senate of the State. I commend it to those gentlemen who wish so strongly for party interest. I am not talking about a fallacy. I am not talking about a thing that is impossible. My democratic friend from Queens [Mr. S. Townsend] sits in this Convention by a majority of only about one hundred in the first senate district, and his colleagues by the same majority. In one of the districts in New York, my republican friend whom I see before me [Mr. Stratton] secured his election to this Convention, and those of the opposite party for the other three places in that district were barely elected. Now, it

is gravely proposed as a great measure to promote the interests of the State of New York, and to promote the interests of the republican party, that we must so organize the senatorial districts below the Highlands that no man of 35,000 republicans in the city of New York, and of at least 25,000 republicans in the remainder of that territory, can ever be represented in his politics in the Senate of the State. I believe when a proposition of that kind shall be carried down to the republicans of that district of country, it will be found that the republicans of that region are not so singular in their notions as to forget or ignore what is due to them as a part of the republican family of the State, not so lost to the notion of their own right of representation as to say "aye" to the bill of sale that sells them out for ever for a fallacy. And, sir, this report of the committee, if the whole of which is fairly under consideration, at the same time proposes to do nearly the same thing with the assembly districts. That region of country can send ordinarily about two republicans from Westchester and six from New York and some four from Kings, and yet of all that body of men — ten to twelve at least — not one is ever to come here in the future. The men of that district are, by the majority in this Convention, to be bound hand and foot and cast out into utter darkness. But whether there shall be any weeping or gnashing of teeth, our friends will determine when the proposition, if adopted, comes down to the polls. I have seen something of politics in this State. I do not propose to forget the teachings of experience. I would not be a partisan here. I have advocated this matter because it is right, and not because of its partisan aspects, and I have received some frowns for doing so. I now want to show gentlemen they are doing very poor work, as partisans, in carrying out a measure that is reactionary to the last degree; and the majority of the world outside of this Convention will believe large districts were devised from mere distrust of popular government, and some on the inside hold the same opinion. I rise, sir, simply for the purpose of presenting this consideration; and having presented this consideration, I am entirely willing to leave the question. I have occupied my share of the time, but I felt it my duty to present this question, as this part of the State did me the honor to give me their votes, and I felt it to be my duty to look after their interests as well as the interests of the other parts of the State.

Mr. OPDYKE — As I am one of those who voted against the large districts, I do not come under the censure of the gentleman from Rensselaer [Mr. M. I. Townsend]. If I were one of that class, I should say, in answer to him, that according to my judgment I should best subserve the interests of the party to which I belong by voting as I believe is best for the interests of the State. That is the only answer I should make. But, sir, I rise for another purpose. I have been an interested listener to this debate —

Mr. M. I. TOWNSEND — I would ask the gentleman a question, if he will allow me. Have I given any offense to that gentleman?

Mr. OPDYKE—Not the slightest. I will say to the gentleman from Rensselaer [Mr. M. I. Townsend] that I speak in all kindness, and with the kindest feelings. I have been an interested listener to the discussion of the question now before the committee, without any intention of joining in that discussion, because I felt that the little attention I had given it placed me in a condition in which I can better perform my duty by receiving instruction than by attempting to impart it. But, sir, in the course of the discussion there have been many views advanced that have somewhat surprised me, and among others I must express some surprise at the persistent efforts which have been made to introduce into the Constitution of this State a new and untried idea; and that is the representation of minorities, a plan involved in the amendment now before the committee. That question and the question of large districts, which is necessarily linked with it, are the questions now before the committee. It is in relation to these, and more to explain the reasons which will govern my vote, than in the hope of throwing further light on the minds of others, that I desire to say a few words. The representation of minorities is an idea started in Great Britain very recently; it has not passed through the ordeal or the crucible of scientific discussion; it has never been tried in practice even in the smallest degree, and it would seem to me most unreasonable, most unwise, if not dangerous, to attempt to place it in the Constitution of our State, where it must last for several years at least, and perhaps for twenty. What is it, Mr. Chairman? According to the theory first started by Mr. Hare, and so warmly indorsed by John Stuart Mill, its effect would be (and I have examined it carefully enough to make that assertion with entire confidence) to destroy party organization. There are, perhaps, some who believe that this would be a blessing. I am not of that class. I am aware that there are many evils incident to party organization. But I hold them as necessary for securing a much greater good. I believe, sir, that parties are essential to the preservation of freedom. I believe that republican institutions would endure but a very short time after their destruction. The principle on which party organization is grounded is this: It is to ignore differences of opinion on minor subjects and matters of detail for the sake of securing the success of more important measures. It is only by that means that States can make progress. When one reform is securely accomplished, parties band together to secure another and another. These are the steps by which we advance to a higher civilization. Without party organization we could not secure them at all. That is one of the advantages of parties; and they have another which is even greater. Without that vigilance and watchfulness which is inherent in party, and which is absolutely essential to its success, we could not expect fidelity in the administration of the government. We all know that when the party in power swerves a single step from the right, the opposite party stands ready to take advantage of it. It cannot depart even in a very trifling degree from the line of strict duty and fidelity to the interests of the public, without being ousted and

put in the minority. Without parties we could not have good government. So much for the original plan of Mr. Hare. We have before us not that plan, but the new plan of the gentleman from Westchester [Mr. Greeley], and a somewhat different form of that plan proposed by the gentleman from Albany [Mr. A. J. Parker]. I am willing to concede that neither of these would utterly destroy party organization, but I am entirely satisfied they would do much to destroy its efficiency, its vigilance and its usefulness. Another objection is that they would transfer what power remains to the people in the selection of their representatives, to the politicians. That power is in a great measure already taken from the mass of the people. As I said before, it is one of the inevitable and incidental evils of party organization. A nomination which is made by the political organization itself, without the consent of the mass of the people, is, in very many instances, tantamount to an election. The plans proposed would make all nominations tantamount to an election. What part would the people have then in selecting their representatives, and what motive would remain to parties for vigilance, activity, watchfulness and fidelity to the interests of the people? They would rest supine under a conviction that they would get a large portion of the power and emoluments of office without effort. But, sir, the unanswerable objection as it seems to me is, that it is a proposition to take an idea which has never been tried in practice, and place it in the Constitution of the State. If we should attempt to do anything of the kind, all we should do is to permit the Legislature to give that power in local elections, such as municipal or town elections, or something of that sort. I have no doubt there may be merit in it, but it remains for investigation and practice to determine that point. It is altogether too soon for us to embody it in the fundamental law of the State. But, sir, I object to it for another reason, and it is this, that it necessitates the large territorial districts. All the reasons that I have heard advanced in favor of the large districts have failed to satisfy me of their wisdom. I was very much surprised yesterday to hear the eloquent gentleman from Onondaga [Mr. Andrews] pass the extraordinary eulogy he did upon what he termed the Albany regency. I agree with him entirely that the tendency of large districts is to place more power in the hands of the central political power at the seat of government. I apprehend that that gentleman referred, not to the regency of his own party, but to the regency of the democratic party, which, when that party was in power in this State, controlled its action and governed its policy. It belonged to a party for which I have no right to speak. I will, however, say this, that in my judgment, it was infinitely superior to that central power which has governed the party to which I belong. I cannot believe that the gentleman intended his eulogy for the central political power of the republican party, which has existed here ever since its organization, and which has stretched its long arm to the State conventions to control its nominations, and to the senate and assembly districts and

endeavored to control them, and, if failing in that, when those elected have come up to this city, getting them within its folds and moulding them to its base purposes here. If the gentleman can pass a eulogy on such a power as that, his experience must differ from mine. For one, I am in favor of holding the representative strictly responsible to his constituents, and to bring him as near to them as possible. That is the way we shall secure fidelity. I was equally surprised to hear the gentleman from Ontario [Mr. Folger] pleading for the independence of the representative, and for the quadruple system of representation in order to divide the responsibility. If there is any force in the argument, it struck me then, as I feel it must have struck the minds of almost every one who heard him, as an argument against rather than in favor of large districts. What we want is direct, immediate responsibility of the representative to his constituency. This thing called independence on the part of the representative, if it means anything, it means independence to do what the constituency does not desire, and what will not promote the public good. Whenever we see a representative becoming independent, it is with a view of promoting his own interest and not that of the public. For these reasons I voted last evening in favor of small districts; I am satisfied they are best, and for the reasons I have stated I shall feel constrained to vote against the proposition of the gentleman from Albany [Mr. A. J. Parker].

Mr. PRINDLE—I do not wish to make a speech, but I desire for two or three minutes to call the attention of the committee to that portion of the plan proposed by the gentleman from Albany [Mr. A. J. Parker], in which he proposes to give a representation to minorities. The gentleman from Westchester [Mr. Greeley], last evening stated that this plan would allow the majority in the city of New York to elect all the Senators sent from New York. He stated this was a mistake because it would require a majority of four-fifths in order to elect. Now, sir, suppose that here is a senatorial district in which there are twenty thousand votes (I take this small number, because it is convenient for my illustration). Suppose the majority have twelve thousand votes, the minority have eight thousand, and the majority make four sets of tickets. Suppose A, B, C and D, are the candidates proposed by the majority. They make one set of tickets upon which they place A, B and C, they make another set upon which they place B, C and D, and they make another set upon which they place C, D and A, and another on which they place D, A and B. If they can distribute those votes equally among the voters belonging to the party of the majority, and they could easily do so by having men at the polls to distribute them equally, the twelve thousand majority in that senatorial district could cast for each of their four Senators nine thousand votes apiece, more than the minority of eight thousand could possibly cast for any one person; therefore, I say that the gentleman from Westchester [Mr. Greeley] was entirely correct when he stated that this plan would allow the majority

in the city of New York to elect every Senator.

The question was then announced on the first part of the amendment of Mr. A. J. Parker, as follows:

SEC. 2. The Legislature for 1868 shall divide the State into eight senate districts, to be numbered from one to eight inclusive; each district to contain, as nearly as may be, an equal number of inhabitants, excluding aliens. No county shall be divided except it shall contain a greater population than is necessary for one senate district.

The question was put on the division, and it was declared lost.

The question was then announced on the second part of the amendment of Mr. A. J. Parker, as follows:

There shall be thirty-two Senators, four to be elected in each senate district. The term of office shall be four years, except that the Senators chosen at the first election, in the first, third, fifth and seventh districts shall hold their offices for two years only.

The question was then put on the second part as read, and it was declared lost.

The question was then announced on the third part as the amendment of Mr. A. J. Parker, as follows:

The first election shall take place at the general election in 1868, and no elector shall, either at the first or at any subsequent election, vote for more than three candidates.

Mr. A. J. PARKER—I have no right to be heard without the consent of the Convention, but I would like to answer a few of the objections made by the gentleman from Chenango [Mr. Prindle].

Mr. FOLGER—I object.

The question was then put on the last part of the amendment of Mr. A. J. Parker, and it was declared lost.

Mr. FLAGLER—I offer the following amendment: Insert after the following words: "The State shall be divided into thirty-two senatorial districts, each one of which shall choose one Senator," the following:

"And the term of office shall be four years. The Legislature, at its first session after the adoption of this Constitution, shall make this division into thirty-two senate districts, which shall be numbered from one to thirty-two inclusive. Said districts shall be formed of contiguous territory, and, as near as may be of an equal number of inhabitants, excluding aliens; and no county shall be divided in the formation of a senate district except such as are equitably entitled to more than one Senator.

"At the first election under said arrangement of districts, the Senators elected in districts having odd numbers shall vacate their offices at the end of two years, and those elected in districts having even numbers at the end of four years; and as vacancies occur by the expiration of term they shall be filled by the election of Senators for the full term of four years."

I have a single word of explanation to make in regard to the change I propose in this substitute. The proposition is to make the Senators elected, one-half every two years instead of being elec-

ted one-quarter each year. My preference is for the proposition as I made or proposed to make it, to have one-quarter of the Senators elected each year. So many of the gentlemen have suggested to me on this floor their preference for the election of one-half of the Senate, that I have changed the proposition and presented it in the form I have read. It will change the Senate by an election every two years, one-half being elected every two years instead of one-quarter each year, thus taking four years to change the entire body of the Senate. At this late hour I will not further detain the committee, because the proposition is so simple that all can comprehend it; and I will leave it for the committee to dispose of as they, in their judgment, shall deem expedient.

Mr. HARDENBURGH— I move that the committee do now rise. We have performed arduous labors this day, and it is well known that we have been invited out.

Mr. FOLGER— I rise to a point of order. A motion for the committee to rise is not debatable.

The CHAIRMAN— The point of order is well taken.

The question was then put on the motion of Mr. Hardenburgh, and it was declared lost.

Mr. BOWEN— Are amendments now in order?

The CHAIRMAN— In the opinion of the Chair another amendment is not now in order, there being two pending.

Mr. FLAGLER— I would suggest that if the change I have made does not meet the approbation of gentlemen, it would conform to my own first choice to have it passed as I originally drew it. If there is any difficulty I ask for a division of the question.

Mr. LEE— The amendment I proposed was to try the question before the committee, as to whether they prefer to elect one-quarter of thirty-two Senators every year, or one-half every two years. I should prefer to have one-quarter elected every year distributed throughout the State.

Mr. BICKFORD— Could we not have unanimous consent that this amendment be withdrawn to take a vote on the amendment offered by the gentleman from Richmond [Mr. E. Brooks]? If it is determined by the committee that there shall be thirty-two Senators, and as this proposition will take the county of Jefferson from the third district, had we not better take a vote on the amendment I refer to, so that we can consider two propositions which are really germane to the subject at the same time?

A division of the amendment was called for.

Mr. BARKER— It seems to me that as the substitute offered by the gentleman from Cortland [Mr. Ballard] has been voted upon by the committee and adopted, the amendment proposed by the gentleman from Richmond [Mr. E. Brooks] must fall, as it is not germane to any proposition that is left, and that another amendment might be entertained by the Chair without the violation of any rule, because it is entirely opposite.

The CHAIRMAN— The Chair is of the opinion the amendment now pending is in order.

Mr. SPENCER— I wish to inquire whether it

will be in order to test the sense of the committee by a resolution upon each of these propositions separately; first, that the sense of the committee be taken upon the question of a four-year senatorial term; second, whether the terms of office of one-quarter or one-half of the Senators shall expire each year.

The CHAIRMAN— In the opinion of the Chair, resolutions are not now in order.

Mr. LANDON— Before a vote is taken on this question I would like to ask the gentleman from Niagara [Mr. Flagler] what his object is in directing the Legislature to make a new apportionment of the senate districts, unless it is to supersede the apportionment which has already been adopted by this committee? If that is the object I would like to have it expressed.

Mr. FLAGLER— The proposition I have made I think is very plain. I think that any word of explanation on my part is unnecessary. If the gentleman from Schenectady [Mr. Landon] will recall the words of that amendment he will observe that it proposes to strike out that part of the proposition as it stands before the committee and insert a proposition to refer the question of the apportionment of the districts to the Legislature. I do it because I prefer that method. I think it better it should be thus referred to the Legislature than to take the time of this committee and encounter the difficulties which would surround it if we attempt to make this arrangement.

Mr. BALLARD— While I agree with the proposition of the gentleman from Niagara [Mr. Flagler], in regard to the terms of office and classification, I do not agree with him in that portion of his amendment which strikes out the present senate districts of this State. It is that part of my amendment which was acted upon last night and adopted. The proposition of the gentleman from Niagara is to strike that out. It would have suited me and I think a majority of the Convention better, if his proposition, instead of striking out, had been to add after the words "each of which senate districts shall choose one Senator," these words: "who shall be chosen at the general election which shall be held next after the adoption of this Constitution, sixteen of whom, namely, those elected in the first, third, fifth, seventh, ninth, eleventh, thirteenth, fifteenth, seventeenth, nineteenth, twenty-first, twenty-third, twenty-fifth, twenty-seventh, twenty-ninth and thirty-first districts, shall hold their offices for two years, and those elected from the second, fourth, sixth, eighth, tenth, twelfth, fourteenth, sixteenth, eighteenth, twentieth, twenty-second, twenty-fourth, twenty-sixth, twenty-eighth, thirtieth and thirty-second districts, shall hold their offices for four years, and every two years thereafter, beginning with the sixteen districts first named, and then with the sixteen districts secondly above named, there shall be elected sixteen Senators, who shall hold their offices for four years from and including the first day of January next following their election." I do not believe in meddling with the districts as now organized. It would be better, if we stand upon the single district system as now organized, and which apportionment has been made with full deliberation and care, to have a

four years' term of office, classifying the Senators in the manner I have indicated. I call for a division of this question so that the Convention may understand what they are voting upon, in the first place, in regard to the term of office, and then the next question is whether there shall be a distribution of districts as they now exist, or whether that distribution shall be thrown over.

Mr. DALY—Do I understand the gentleman from Cortland [Mr. Ballard] as willing to accept that portion of the proposition of the gentleman from Niagara [Mr. Flagler], making the term of office four years instead of two?

Mr. BALLARD—Yes, sir.

The CHAIRMAN announced the question to be on the first part of the amendment of Mr. Flagler, as follows:

"Insert after the words, 'the State shall be divided into thirty-two senatorial districts, each one of which shall choose one Senator,' the following: 'and the term of office shall be four years.'"

The question was then put on that portion of the amendment, and it was declared carried.

A count was called for.

Mr. BICKFORD—I hope that the amendment will be voted down.

The CHAIRMAN—Discussion on the question is not now in order.

Mr. BICKFORD—I supposed it had been held that it was.

Mr. BALLARD—Let me inquire if an affirmative vote on the proposition strikes out the present apportionment.

Mr. FLAGLER—It will not. I do not desire to have any misunderstanding with regard to this. If this clause is adopted, the term of office will be four years.

The question was again put on the first part of the amendment offered by Mr. Flagler, and it was declared adopted.

Mr. FLAGLER—I move to amend the amendment of the gentleman from Cortland [Mr. Ballard], as it now stands, by striking out all after the words "four years," just adopted, and inserting the following, which is the second clause of the amendment I offered:

"The Legislature, at its first session after the adoption of this Constitution, shall make this division into thirty-two senate districts, which shall be numbered from one to thirty-two inclusive. Said districts shall be formed of contiguous territory, and as near as may be an equal number of inhabitants, excluding aliens, and no county shall be divided in the formation of a senate district, except such as are equitably entitled to more than one Senator."

Mr. CORBETT—The point I desire to ascertain is whether the adoption of that amendment will strike out the apportionment presented in the amendment of the gentleman from Cortland [Mr. Ballard].

Mr. FLAGLER—This amendment does; but I would be glad to have the vote of the committee on that point to test its pleasure.

Mr. DALY—I have but one suggestion to make in reference to the amendment. Hitherto in the Constitutions of this State, the apportionment has been fixed in the Constitution itself and has not been determined by the Legislature. I

think it wiser to conform to that amendment as suggested by the gentleman from Cortland [Mr. Ballard] than to leave this matter to the Legislature.

Mr. KETCHAM—The Legislatures have varied the apportionment provided for in the Constitution.

Mr. DALY—Those exceptions confirm the existence of the general rule.

Mr. E. A. BROWN—I simply rise to ask a question so that there will be no misunderstanding about it, whether the amendment of the gentleman from Cortland [Mr. Ballard] as adopted last night, includes the senate districts precisely as they were formed by the Legislature of 1866.

The CHAIRMAN—The Chair so understands it.

Mr. BICKFORD—I apprehend that it is equitable to adopt this amendment and to have a new apportionment for this reason. We propose a different basis of suffrage in the present Constitution from what has heretofore existed. The present apportionment was made on the basis of excluding from the representative population of the State aliens and persons of color not taxed. Now we propose to admit persons of color to suffrage, and of course equity requires a different apportionment. That is all I have to say on the subject.

The question was put on the second part of the amendment of Mr. Flagler, and, on a division, it was declared lost.

Mr. BALLARD—Is an amendment now in order?

The CHAIRMAN—The Chair will inform the gentleman that an amendment is not in order, as we have not yet got through with the amendment of the gentleman from Niagara [Mr. Flagler].

The SECRETARY proceeded to read the third portion of the amendment of Mr. Flagler, as follows:

"At the first election under said arrangement of districts, the Senators elected in districts having odd numbers shall vacate their offices at the end of two years, and those elected in districts having even numbers at the end of four years, and as vacancies occur by the expiration of term, they shall be filled by the election of Senators for the full term of four years."

Mr. EVARTS—I take it that on this question, those who vote affirmatively, prefer a division of the Senate and an election of Senators biennially, and those who vote negatively prefer to divide the Senators into four classes and to elect one-quarter annually.

Mr. ALVORD—I shall vote against this proposition for this simple reason. I am opposed, and decidedly opposed (and if gentlemen will recollect they will see that that must be the feeling of the Convention), to a portion of this State electing a portion of the Senate at different times and periods from the entire State electing a Senate. I am in favor of a four years' continuance in office of a Senator. I am in favor of it because it is the best thing we can get, but I am not in favor of the western portion of this State electing at the end of two years and the eastern portion of it electing at the end of two years after that.

Mr. FLAGLER—It does not propose such a division.

Mr. ALVORD—I only put this by way of illustration. You commence at No. 1 to elect at the end of two years, and No. 2 at the end of four years, then district No. 1 again at the end of six years, and so on. What I object to is an election over only half of the State at the same time for Senators.

Mr. CORBETT—The illustration of the gentleman from Onondaga [Mr. Alvord] would be worth something if the odd districts were in one part of the State and the even in the other.

The question was put on the last portion of the amendment of Mr. Flagler, and it was declared carried, on a division, by a vote of 69 to 32.

The CHAIRMAN—The question now is on the amendment proposed by the gentleman from Richmond, Mr. E. Brooks, to the second section as amended.

Mr. SCHOONMAKER—I propose the following amendment:

Strike out the word "thirty-two" wherever it occurs and insert "sixteen." Amend direction as to number of Senators for each district by striking out "one" and inserting "two," making two Senators from each district, the Legislature so to regulate the term of office that eight Senators shall be elected every year.

Mr. FLAGLER—I rise to a point of order, that the amendment of the gentleman is in direct conflict with the affirmative vote on the amendment already adopted.

The CHAIRMAN—The Chair is of opinion that the amendment can be received.

Mr. BARKER—I do not rise to make a speech, so gentlemen need not put on long faces. I voted for the term of four years with the expectation that before the subject was disposed of the other propositions which bear upon the amendment would be considered. I think electors should be allowed to participate in the choice of Senator oftener than once in four years. The dividing of the State into small constituencies, and thus silencing the voice of the people for four years, so that it would not be heard in one of the representative departments of the government, I say, is an injustice. If we had the large districts, and had four Senators in each, and elect one every year, then each elector in the district could vote and his sentiment would come fresh into the Legislature each year. Now, I wish that this amendment as proposed may be adopted. Then in each two years as they succeed until the Constitution shall be amended again each elector may vote for a Senator, and he is oftener heard on the popular subjects which are submitted to the people, and I beg delegates not to forget how often the popular issues of the day are changing, how often the people desire to be heard on this subject of representation in the Legislature of the State.

The Chair announced the question to be on the amendment of Mr. Schoonmaker.

Mr. HATCH—I would like to know whether that is not bringing up the question again of thirty-two districts, practically?

The CHAIRMAN—The Chair has just decided that the amendment is in order.

Mr. HATCH—I do not propose to take any appeal from the decision of the Chair, but it seems to me a very plain question that we are going over it again. We passed upon it two or three times this evening.

Mr. BALLARD—This proposed amendment involves the overthrow of the vote last evening establishing thirty-two districts in the State. It is not true to the extent that has been stated, that there would be no election except every four years; elections would occur every two years. By laying that feature aside we lose the benefit of two years' experience in the Senate constantly, and it has been admitted that there was a need of experience in the Senate.

Mr. RATHBUN—I rise to a question of order. I would like to know what question is pending before the committee?

The CHAIRMAN—The pending question is the motion of Mr. Schoonmaker, to strike out the word "thirty-two" wherever it occurs, and insert "sixteen," and to strike out the word "one" and insert "two."

Mr. RATHBUN—Did the Chair decide that the amendment was proper?

The CHAIRMAN—The Chair is of opinion it is proper.

Mr. RATHBUN—Then I submit that there is no question before the Convention, that the gentleman [Mr. Ballard] is wrong, and there can be no appeal.

Mr. BALLARD—I am arguing the question of the amendment, not the question of order.

Mr. RATHBUN—The gentleman is arguing that it is re-opening the decision of the Convention upon his amendment. That is his argument.

The CHAIRMAN—The Chair understands that he is arguing the impropriety of the committee adopting the amendment.

Mr. RATHBUN—That is an argument against the decision of the Chair. [Laughter.]

Mr. BALLARD—When the vote is taken it ought to be understood by the committee what the effect of adopting this amendment of the gentleman from Ulster [Mr. Schoonmaker] will be. It will be to overthrow the thirty-two or single district system, and to adopt the sixteen district system.

Mr. SCHOONMAKER—I did not intend saying a word on this subject, but inasmuch as others have spoken on it I wish to state the object of it. It is now in contemplation, as I understand it, to have the term of the Senator four years, and to have an election every two years for sixteen Senators, to have sixteen Senators go out every two years. My object is to divide the State into sixteen senatorial districts, giving two Senators to each district, then having the term of office four years, and having an election in every senate district for one Senator every two years.

The question was then put upon the amendment of Mr. Schoonmaker, and it was declared lost, on a division, by a vote of 40 to 69.

Mr. SCHELL—I beg leave to offer the following amendment to section 2 as amended:

Strike out after the words "four years," and insert:

"And shall be constituted as follows: An enu-

meration of the inhabitants of the State shall be taken under the direction of the Legislature, in the year 1868, in the year 1875, and at the end of every ten years after the last mentioned year. And the Legislature shall, at the first session after the return of the enumeration in the year 1868, and upon the return of every subsequent enumeration, apportion the State into thirty-two districts which shall be numbered from one to thirty-two inclusive, that each district shall contain as nearly as may be an equal number of inhabitants who are citizens, and shall remain unaltered until the return of another enumeration, and shall consist of contiguous territory—no county shall be divided in the formation of a senate district except such county shall be equitably entitled to two or more Senators.

"The districts as the same are now constituted shall remain until the enumeration and apportionment as herein provided shall be made and the first election under this Constitution shall take place in 1869."

Mr. A. J. PARKER—I move that the committee do now rise, report progress, and ask leave to sit again.

SEVERAL DELEGATES—No! no! no!

The question was put on the motion of Mr. Parker, and it was declared lost, on a division, by a vote of 38 to 64.

Mr. SCHELL—Mr. Chairman—

The question was then put on the amendment of Mr. Schell, and it was declared lost.

Mr. BICKFORD—I offer the following amendment.

Mr. WEED—I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Weed, and it was declared lost, on a division, by a vote of 34 to 67.

Mr. SCHELL—I move now to reconsider the vote which has just been taken on my amendment. In doing that I may be permitted to say I had the floor when the Chair was putting the question on my amendment. I was unfortunate in not being recognized.

The CHAIRMAN—The Chair did not hear the gentleman.

Mr. SCHELL—I now move to reconsider the vote taken on my amendment.

The CHAIRMAN announced the question on Mr. Schell's motion.

Mr. ALVORD—I rise to a point of order. Just before the vote was announced, the gentleman from Jefferson [Mr. Bickford] offered an amendment.

Mr. CONGER—I want to know if the gentleman [Mr. Schell], cannot move a reconsideration and ask that it lie on the table.

Mr. ALVORD—I have no objection to that.

The CHAIRMAN—The Chair is of opinion that the point of order is well taken.

Mr. TAPPEN—Will the gentleman from Jefferson [Mr. Bickford], give way for the reading of the amendment of the gentleman from New York [Mr. Schell], and to move a reconsideration?

Mr. BICKFORD—I will if I do not lose my chance. [Laughter.]

The SECRETARY again read the amendment of Mr. Schell.

Mr. SCHELL—My attention has been called to the apportionment as reported by the gentleman from Cortland [Mr. Ballard] and which has been adopted by the committee. It will be seen that that is the same apportionment which has maintained in the State since 1866, the Legislature of that year having made an apportionment under which the Senate is to be elected this year. In examining that apportionment, I find that it is unequal and unfair, and I will call the attention of the committee to it; and to the population which the apportionment represents, of which I have made a schedule so that the committee may understand it particularly. It will be seen, if the committee follow me, that the first, second, third, fourth, fifth, sixth, seventh, eighth and ninth districts have populations varying from 95,412 to 169,707 for its territory, making a total population for these nine districts of 1,094,720, giving an excess of 127,586 in those districts over the average which should be allowed to each Senator. The average representation is 107,126; so that the committee will perceive that in the lower part of the State, including nine districts, there was an excess of population of 127,586, being more than the representation of one Senator. The sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth and twenty-sixth districts contain an average population of from 84,655 to 111,531, making eleven districts represented by 1,065,397, showing a deficiency of 112,989 in these eleven districts, to meet the demands of the number requisite for representation. Thus it will be seen that taking the districts from sixteen to twenty-six—eleven districts in the central part of the State—they show a deficiency of 112,000, or sufficient to make one representative in the Senate; and taking the nine districts from the lower part of the State, they show an excess of 127,586, showing an excess of one representative. This is sufficient, in my judgment, and I think in the judgment of the committee, to show that it is an unfair and unjust apportionment. Whether it be done for political purposes, or for what purpose, I would not undertake to say, but at any rate, it has been a great cause of complaint on the part of those with whom I was associated, that the State at the time of the apportionment was unjustly and unfairly apportioned with respect to the interest of the party not in the majority in this Convention; and I do not think the majority of this committee will indorse that action which carries evidence of its unfairness on its face. But there is another reason, one which has been adverted to by the gentleman from Rockland [Mr. Conger], and the gentleman from Richmond [Mr. E. Brooks], why this apportionment should be made at the earliest possible period. The census of 1865 has been universally condemned as not being correct, and in saying that I do not care to reflect on the distinguished official of the State government who superintended the making of it (for I do not think he was a party to the act), but those whom he employed to make the census in the city of New York so far neglected their duty that it is susceptible of proof that large portions of the

city was not canvassed at all by the census-takers. With the knowledge of that fact universally conceded I do not think this committee has a right now to indorse and to perpetuate this apportionment founded on that census for the remainder of the term for which it was made. Sir, I cannot conceive that it is necessary to urge to the committee that that census was fraudulent or unfair and unjust and oppressive to the city of New York. During that period those who were there from 1860 to 1865, and those who were familiar with the business activity of the city, know that during the three years down to 1865, property increased in value; that houses could not be rented unless at large advances; that labor was dear; that the population was large, and that every department of business was filled to overflowing. Persons gathered there from every section for the purpose of residence, hotels were filled, and every means of accommodation was afforded by the city of New York to supply the wants of others, such was the demand. But we are not left to mere conjecture on this subject. There are certain data to refer to which will enable us to trace out without any difficulty the population at that time in the city of New York. I have taken the trouble to make a comparison of the votes in the city of New York for some time previous to 1865, and I have gathered from those votes and from the population existing at that time, the ratio that existed between the population and the vote. Taking that data I have been able to fix almost to a certainty the population that existed in New York in 1864, one year prior to the time of this census, and those who know the history of the country know that from 1864 down to the time the census was taken in 1865, the population of New York largely increased; and when I give the population of 1864, I give it at a lower number than that which existed in 1865. If the committee will allow me, I will detain them but a moment in referring to those data. The population of the city of New York, in 1855, according to the census, was 629,810. The vote in 1856, the year following, being the presidential vote, was 79,606, which showed an average ratio of voters to the population of seven and ninety-three one hundredths. In 1860, the population, according to the census, was 813,869. The vote was 95,583; the ratio was eight and fifty one-hundredths to a voter. We find by a reference to the returns of 1864, the presidential election of that year, that the vote in the city of New York was 110,390. Taking the mean ratio between the years 1855 and 1866, it would be eight and twenty-two one hundredths, which gives a population in the city of New York in 1864 of 907,405. Now, Mr. Chairman, is there any member of this committee who can believe, with this data before him, that the population of New York receded from 1864 to 1865 some two or three hundred thousand? If there is any doubt about the fact that it did not recede from the population of 1860, 813,669, there is no doubt in my mind that the candid examiner would come to the conclusion according to this data that the population in 1864 was 907,405, and it could not have diminished in the following year upward of 200,000.

Mr. LAPHAM—Will the gentleman from

New York [Mr. Schell] allow me to ask him a question? I would ask him whether he did not last evening vote for the amendment of the gentleman from Cortland [Mr. Ballard], which was adopted?

Mr. SCHELL—I did not.

Mr. A. J. PARKER—Will the gentleman from Ontario [Mr. Lapham], allow me to ask him a question? What has that to do with the question now under consideration.

Mr. LAPHAM—When I get the floor I will answer the gentleman.

Mr. SCHELL—There is another mode of arriving at this, it strikes me, which ought to satisfy any fair minded man that this census is unjust and oppressive on the city of New York. Taking the population of that city as returned in 1845, 371,223, and taking the population in 1850, which was returned at 515,447, shows an increase for those years of 29½ per cent; taking the population of 1855, when it was 629,810, shows an increase in 1850 of 20½ per cent, taking the population again in 1860, when it was 813,669, shows an increase on the population of 1855, of 31½ per cent, making an average for those four terms of 27 1-6 per cent, which would show an increase on the population of 1860 to 1865, of 221,046, making the population in 1865, 1,034,715. That is a plain proposition, and a matter of figures about which there can be no mistake. But, sir, there are other matters connected with the city of New York, to show the progress of the people, and from that we can also gather that there has been an actual business increasing population in that city from 1860 to 1865. There is a class of institutions in our city known as savings banks, which are the resort of people of moderate means, persons of moderate circumstances in life, and I have taken occasion to refer to that class of institutions in order to see whether there has been any falling off in their business; for if 100,000 people had left New York in 1865, if our business had become so bad, if the grass were growing in our streets, if this silence came over the city, that class of institutions would have been the first to have felt the effect of it. But, sir, I will read to the committee the result which I have gathered from examination of the deposits in the savings banks. In 1855 the average deposits in the savings banks were \$26,111,719.20. In 1860 the average deposits were \$43,410,090.88; showing an increase from 1855 to 1860 of \$17,298,371.68. It will be observed that from 1851 to 1860 there was a large increase in the population of New York of 31½ per cent. As I said before the deposits in the savings banks in the year 1860 were \$43,410,090.88, and in 1865 they had reached the sum of \$72,928,854.59, showing an increase in that class of business of \$21,518,763.71. If New York had been in that bad state when the population was falling off and business paralyzed, would it be possible for that class of our citizens, including the mechanics and men of small means, to have made that large sum of money and deposited it in the savings banks? There are other means of reference which I will call the attention of the committee to. I hold in my hand a statement showing the taxes and expenditures of the city of New York during those

times, and if the population had departed, and the census of 1865 is correct, it would have been unnecessary to have taxed the city of New York with this large additional expense which this record now exhibits. In 1860, the tax levy was \$9,746,559.58. In 1865 the tax levy was \$18,202,857.56. Our board of education, which would have been the first to have felt the effect of any loss of population, makes this return: In 1860 the amount appropriated for the use of that board was \$1,278,781. In 1865 it amounted to \$2,293,508.58 nearly 100 per cent additional appropriated by the city and county of New York to teach the children of the city of New York in 1865 over and above the amount appropriated in 1860. Now, in reference to the police: In 1860 \$1,359,625 was sufficient to pay the expenses of that department, but it required \$2,214,556.56 to pay the expenses of the same department in 1865. With this data before the committee, it seems to me that it cannot be questioned but that the population of New York city instead of diminishing from 1860 to 1865 had largely increased. Every evidence possible to bring before the committee would be evidence of that fact. Nothing stands in the way except the census made by the direction of the Legislature of 1860, which is evidence to the contrary. I hope the amendment I have offered will prevail, and that this committee will not indorse that census, and will not indorse the apportionment made under it by the Legislature of 1866, but that we shall have opportunity, by a new enumeration which may be taken in 1868, to have the city re-apportioned in 1869, so that this Constitution may be effective and operative, and apportioned upon a fair and just apportionment of the representation of the State of New York. We cannot afford to remain in New York without being properly represented. I say we cannot afford, when we know we have nearly half the taxable property of the State in the city of New York, where we are called upon each year, to contribute to assist in paying the expenses of the State, and, sir, I hold in my hand also, the amount which we were called upon during the year 1865 to pay to the State as the portion of the taxes to be paid by our city, which amounted to \$2,592,000.73.

Here the gavel fell, the twenty minutes having expired.

Mr. LAPHAM—I am opposed to the amendment of the gentleman from New York [Mr. Schell], and I hope it will not prevail. I am very happy to learn from his statistics that the deposits in the savings banks of the city of New York have increased from 1860 to 1865 to the sum of over thirty millions of dollars. It is a complete answer to the cry which has been so often sounded during the session of this Convention, of the onerous, grinding effect of taxation upon the people. The deposits in those banks are the savings of the laborers of the city, and they present the gratifying spectacle that amid all the exactions which have been made upon the people to sustain the government in the ordeal through which we have passed, the common people after all have been saving more and

preserving more than they have ever done before in the same period of time. I am opposed to the amendment of the gentleman from New York [Mr. Schell] for this reason. He proposes that, for the simple purpose of fixing the basis of senatorial representation, there shall be an enumeration of the inhabitants of the State taken in the year 1868. There is no precedent for incurring the enormous expense involved in taking such an enumeration for the simple purpose of making it the basis of representation in one branch of the Legislature, and I trust the gentlemen of this Convention are not prepared to join those who are proclaiming here that the people are taxed beyond their ability to pay, and are not willing to place upon the shoulders of the people the additional burden of incurring this enormous expense for the simple purpose of correcting a basis of representation which was so unanimously sustained in the vote that was taken last evening. I have another objection to the proposition of the gentleman from New York [Mr. Schell]. If I understand it rightly, it provides that no county shall be divided in the formation of senatorial districts. If that be true, it is a glaring injustice to the city of New York, for it compels that city, which, under the present enumeration, is entitled to five Senators, to submit to have but one. That is the legitimate, necessary effect of the proposition of the gentleman—that no county shall be divided in the formation of senatorial districts, and I am not willing to sanction that injustice to the city which he represents. [Laughter.]

Mr. HUTCHINS—It may be that the census of 1865 was erroneous, and it may be that it was not. This much is true, it is hardly to be expected that any census that may be taken will come down to a mathematical accuracy. There is one test that can be applied to this matter, which, it seems to me, must set at rest once and for all time this continual cry which we have heard of the unfairness of the census of 1865. That there is a large population in the city of New York no one will dispute. That a large mass of humanity congregates there every day, transacting business, crowding the streets, and giving the appearance of an overwhelming population as residents of that city, there is no doubt. But whether they are legal voters or not is another and a very different question. For my part, I have no doubt that there are at least three hundred thousand people to-day in the city of New York, doing business there, who are either aliens or who are residents of other parts of the State or of other States of the United States. Why, sir, Connecticut pours her population in daily by thousands. New Jersey pours her population into the streets of New York by tens of thousands. Long Island and Westchester county, and even the interior of the State join in swelling the tide of humanity that daily pours into that city. Now, take this test, take the actual vote which is cast at any election in the city of New York, and you will find that there are five senatorial districts in the interior of this State, that at each of your elections cast a larger vote than the five senatorial districts in the city of New York. Under the first Constitution of this State the enumeration

was by electors. The representation of your assembly and senatorial districts was upon the basis of electors. Take that now, which is a fair way of representation, and you will find that New York to-day, upon the vote that she cast, is not entitled to over five Senators. Last fall we had, I suppose, as exciting and as close a contest, in the city of New York, as we ever had, or ever shall have again, for we had an issue then that came home to our doors, and the people of the State of New York looked on the issue which was to be decided in the city of New York, for the whole election turned upon the issue that was raised there, namely, the excise law which had been passed by the Legislature of last year. Will the gentleman who has addressed us, from New York [Mr. Schell], say that every vote was not cast that could possibly be dragged to the polls on that occasion? Have we not been told by the gentleman from New York [Mr. Daly] one of the judges of the court of common pleas, that his court was kept open day and night for the purpose of making every legal voter it was possible to make, that his vote might be cast at the election? Was not every house ransacked, every street explored, and every person taken by the collar and brought to the polls to vote on that occasion? Was not every man enrolled whose name could be obtained, in order that he should be in a position to vote at that election, and what was the result? A less vote in the five senatorial districts of the city of New York than was cast in five other senatorial districts in the interior of the State. Sir, this large population that we see in New York, is not a population residing there. It is a population made up in great part, not the major part but in great part, of those who are there temporarily transacting business. My friend, as he walks down Broadway, after taking his breakfast, meets the tide of population, and he looks on every one of them as a resident of the city of New York, whereas it is from your hotels, your boarding-houses that they come—some two hundred thousand of them not residents of New York, but temporarily staying there and transacting business; and it is this reason, and this alone, I think, which has given rise to the idea that the census was unfairly taken. I, for my part, in looking this matter over carefully, have come to the conclusion that the census was as fairly taken as those of previous years have been. I hope this Convention will not be guilty of this foolish act, merely in consequence of clamor, and as I think, nothing but clamor—to say that the census shall be taken again as proposed by the gentleman from New York [Mr. Schell], and the State redistricted.

Mr. E. BROOKS—As we have been in session here some thirteen hours, with very brief intervals, I think it has arrived at such a period of the night that the majority can afford to rise, report progress, and ask leave to sit again, and I make that motion.

The question was put on the motion of Mr. Brooks and it was declared lost, on a division, by a vote of 41 to 70.

Mr. E. BROOKS—I suppose the majority have concluded that we are in for a night's session, and I can assure them that I can stand it, for one, just as well as they can. Now, Mr. Chairman, I wish to say a word or two in regard to the census of 1865, to which the gentleman from New York [Mr. Hutchins], who has just taken his seat, has made allusion. Sir, I pronounce here, in my place, and I can give the authority if need be, that the census of 1865 taken in the city of New York, by the authority of the State of New York and by the officers of the State, was, in all respects, or mainly, an unfair, unjust and negligent census return; that it is within the power of the Statistical and Geographical Society of the city of New York, which revised that census, and which visited many of the wards in that city, to prove what I say to be true, and that there were whole streets where these census-takers, which cost the city of New York some fifty thousand dollars for the performance of that work, never visited and never pretended to visit. Why, sir, the thing is palpable on its face. The Federal census was taken in the year 1860, and with very great care, where not only the people were enumerated in their respective dwellings, but where the government officers had to make returns, not only in regard to the occupations of the people and the number of the people, but in regard to the property of the people; and the census of 1860 demonstrated this fact, that there were 813,000 people in the city of New York in the year 1860, whereas by the State census taken five years later, to wit, in 1865, that census had been reduced to 726,000. Sir, is it not obvious to every gentleman upon this floor that that census was unfair in its character? Does not every man know, if he chooses to know—

Mr. C. C. DWIGHT—I would like to ask the gentleman a question, whether it is a fact, which I hear stated on all sides of me, that the census of 1860, to which the gentleman refers, was taken under the direction of Captain Isaiah Rynders, at two cents a name?

Mr. E. BROOKS—Whether it was taken under the direction of Captain Isaiah Rynders at two cents a name or not, is immaterial to the question at issue. Why, sir, the fact I have stated is proved by the action in regard to the enlistment question. When officers visited these various wards to know who were there, proper subjects for enlistment, there was no doubt on the part of the officers at the time as to who were liable to military duty, and it was a general admission on the part of gentlemen of all parties that the population of New York was near one million of people at that time. This fact was proved when the State authorities and city authorities were visiting those houses to know who were liable to military duty at that time. I do not know as regards the fact, whether Captain Rynders received two cents a name, or whether Chauncey M. Depew received two or three cents a name. It is immaterial to the issue; but this fact I do know, and have stated it here, that it cost the city of New York fifty thousand dollars to take that census, which resulted in a depreciation.

tion of its population to the number I have named. That is the fact in regard to this case. Now, sir, I do not care to get over the facts I have enumerated either in regard to the report or to the census; but when the gentleman from New York [Mr. Hutchins] says the city of New York is entitled to but five Senators, in my judgment he does not represent the city properly in that regard, for I believe there are a million of people in the city of New York, and that they are entitled to seven Senators in fair comparison with other parts of the State. He alludes to gentlemen who come to New York to do business from New Jersey and Connecticut. Those who do not live in New York do not pretend to live in New York any more than I do, who live in the county of Richmond. When a census is taken in the city, those who do business there but do not live there are not enumerated. Gentlemen know this very well. But when you take the census properly, you go to every man's house and ask who lives there, how many males and females, what are their ages and occupations, and thereby and therein you get a proper return to the census, and in no other way can it be received. Why, sir, it is the same in regard to Kings county. Every one knows that the census was taken, at a period when large numbers of the inhabitants were not in the city; when, for example, as always in the summer time, thousands and thousands of the inhabitants go to the watering places, go to New England, go to the West, and to the mountains. This was the time the census was taken, and when the doors of the houses were closed, and it was impossible in many instances to get admission into those dwellings to find out who were there. So much for this subject, and with these remarks I am willing to leave it for the present.

Mr. GREELEY—I desire simply to make a statement which will elucidate the matter now before us. The official census taken in the summer of 1865 returns the number of legal voters in the city of New York at 128,975, as you will see in the document before us. There have been since that time two years of naturalization, and a very heavy naturalization last fall. A very great effort was made to call out the vote of the city. We had the mayor of the city running for Governor, and an immense personal interest in all the grog-shops of the city in favor of getting out every vote for him. The utmost possible vote was called out, and the total number polled was less than 114,000, when, according to this official census, there must have been as many as 140,000 voters in the city. I submit that this vote of the people, taken last November, when there was no pretense that they were away in the country, or at the seaside, or anywhere else, when compared with the official return of voters in this census, proves the census taken in 1865 to be fair and just.

Mr. E. BROOKS—It is perfectly notorious in our elections, even in the most exciting of them, that not more than seventy or eighty per cent of the people who are voters deposit their ballots.

Mr. GREELEY—It was not so last fall, and I make abundant allowance for that. I say, accord-

ing to this census, there were 140,000 voters in the city last fall; and yet the total vote was 114,000. If there had been 160,000 voters there, as there would be according to what these gentlemen say, then it is not possible that so few as 114,000 votes should have been taken in such an exciting election—an election which especially appealed to the interests of the largest and most active class of our politicians.

Mr. DALY—I am opposed to the amendment of my colleague from New York [Mr. Schell], while I agree with him in respect to the facts which he has stated. I desire to state one fact in answer to my other colleague [Mr. Hutchins] in reference to the actual population of New York, and that is that, whatever may be disparity between the actual population and the electoral vote, an attempt (and so far as I know and believe a fair attempt) was made by the board of supervisors, by an experimental census taken in the districts of certain wards, which would present a fair average of the whole to ascertain, at the expense of the city, what the actual population of the city was, and the result, if I may trust my memory, showed that it was something over 900,000. It was, of course, a mere average, predicated upon the facts thus ascertained. I am opposed to the amendment of my colleague [Mr. Schell] for several reasons, some of which have been stated by the gentleman from Ontario [Mr. Lapham]. We have thirty-two districts. When I voted last night, I voted in favor of the large district system, and I regret the action of the Convention in that respect. But the Convention has settled that matter, and the judgment it has passed must be regarded as final. The Convention has arranged the districts and the amendment of my colleague [Mr. Schell] now submitted would disturb what we have already settled. And there is another objection to it. In the order of the State and national census, the taking of the census occurs every five years, and the proposition to take the enumeration of the inhabitants of the State at the year indicated by my colleague, would disturb that order of numerical arrangement, to say nothing of the great expense attending on taking the census. To provide for this objection in a particular part of the State, justice may be done in that respect by conforming the enumeration to the next national census, for although it is a census with which the State has nothing to do, we may assume it will be fairly taken by the national government. But be that as it may, I am opposed to the amendment, as it would disturb the proposition of the gentleman from Cortland [Mr. Ballard], which we have acted upon and adopted.

Mr. CONGER—Mr. Chairman. [Cries of question]. I believe that I have the floor, Mr. Chairman. I did not desire to address the committee to-night, at an expense of great physical effort and inconvenience to myself, and I was willing the committee should have adjourned at a much more reasonable hour; but as this is the only probable opportunity which may present itself to show by a detailed examination of the census of 1865 that it was erroneous, I shall detain the committee a few moments for that purpose. A critical review of the tabulations of this census

discovers the method of its inaccuracies. Out of its own own belly cometh forth its lie. On page xliii, a comparative view of the percentages of increase or decrease for consecutive periods of five years each are given, ever since a census was taken, either by the United States government or the State of New York. I will not carry you any further back than the year 1830. The increase of population in the city of New York from 1830 to 1835 was thirty-six per cent. From 1835 to 1840, it was sixteen per cent. In 1845, it was sixteen per cent over the numbers given by the previous census. In 1850, it was thirty-nine per cent. In 1855 it was twenty per cent, and in 1860 it was twenty-nine per cent. But in 1865 there was computed to have been eleven per cent of decrease. While there had been a steady increase up to 1860, on the basis of which, if you average the six preceding takings, the population would have grown twenty-six per cent from 1860 to 1865, this census of 1865 makes it eleven per cent diminution. That makes a gross error of thirty-seven per cent. Now, compare with the same figures the corresponding rates for the whole State, and observe the results. The percentage of increase of population in the whole State by the same table for 1835 was thirteen per cent above the population of the previous census. By the census of 1840 it was twelve per cent; of 1845, it was seven per cent; of 1850, it was nineteen per cent; of 1855, it was twelve per cent; of 1860, it was twelve per cent; and when you come to 1865 it was two per cent. decrease. The average rate then of increase up to 1860 for the whole State during the last thirty years preceding is, by an easy computation ascertained to be twelve per cent.

Mr. C. C. DWIGHT—Does not the gentleman assume the absolute accuracy of the census of 1860, taken by Marshal Rynders?

Mr. CONGER—As to the census of Marshal Rynders, on which the gentleman lays so much stress, the tables show he could not have made more than nine per cent of error, unless you suppose the city of New York from 1855 to 1860 had no foreign increment. In attacking the United States census of 1860 does not the gentleman see that he must also dispute the State census of 1855? That census gave the city of New York twenty per cent increase on the previous one. The census of 1860, taken by the Marshal, gave only twenty-nine per cent. Does not the gentleman know that the population of New York increased more from 1855 to 1860 than it had for a period prior to that of ten years? Suppose the Marshal was in error, or suppose he committed a fraud, the average of those census tables shows he could have at best committed a fraud of nine per cent, because the previous census of 1855 made the city of New York increase twenty per cent on the previous rate; or only three per cent, as the average of its increase for the six would have entitled it to an increase of twenty-six per cent in 1865. But to go to the whole State census and follow this inquiry it is not to be urged that Marshal Rynders took the census of the whole State, though he was instru-

mental in taking it for the southern district. Your census for the whole State shows that the population only increased twelve per cent, the same ratio in which it had increased at the taking of the previous census of 1855. I am willing to prove, and prove it by the census of 1865 itself, that you must either declare that the city of New York lost about twenty-five per cent of its population, the natural rate of increase, by the calamities of the war, or else that this census of 1865 was an absolute wrong and injustice upon the city. The gentleman who asked this question [Mr. C. C. Dwight] was patriotic, and, like the Marshal he bears a military title; and I ask him, is he willing to admit that the great proportion of men who went to the war, and sacrificed their lives, came out of the city of New York, taking the whole State as a basis of enlistment? He knows as well as I can that the city sent only 116,382 men to the war, while the State at large furnished 473,443, which last amount may serve as a basis of inquiry as to the decline of the State population, while the former fails to give any insight into the alleged deficiency of the city.

Mr. KINNEY—Does the gentleman take into consideration the fact that during the war immigration almost entirely ceased?

Mr. CONGER—Suppose it did?

Mr. ALVORD—Will the gentleman allow me to ask him a question? I ask whether the immigration did not—

Mr. HATCH—I want to know if the gentleman from Onondaga [Mr. Alvord] is in order? He is not in his place. [Laughter.]

Mr. CONGER—The argument about immigration into the city or State amounts to very little on this special question. The immigration into the city from 1855 to 1860 was 589,029, and from 1860 to 1865 it rose to 678,337. The city of New York, as the gentleman knows very well does not retain one-tenth of the population that comes from foreign shores, but the immigration is distributed over all the Western States of the Union; and the immigration from 1855 to 1860, exceeded that from 1860 to 1865, as by the figures just given only about 90,000. But, as wherever the immigration goes, it is a fair supposition that it is evenly distributed throughout the State, I want to state sir, this simple problem: When the census-takers come here and give you a summary of their returns, they tell you that the State of New York has lost two per cent of its population in the five years, while they tell you in the same breath that the city of New York has lost eleven per cent of its population. If you take the average population of the census of the city of New York for the six preceding census it would have, according to its natural rate, gone up to twenty-six per cent. If you take the average of the whole State population for those six years, it would be but a fraction over twelve per cent; so that, if you suppose the population of the State had declined fourteen per cent from its natural rate of increase, in order to make this tabulation of the decrease of the State for 1865 correct, still taking that fourteen per cent from the rate of increase of the city of New York, plus the decrease of eleven per cent

charged by the census against the city, you find twenty-three per cent as the error of the census in regard to that population. Thus, sir, I think the census, on the face of it, shows that a great injustice was done to that portion of the State, and a like method of inquiry will discover a much greater injustice practiced on the county of Kings. I intend that by the census this Convention has it in its power to do justice, or to approach to some measure of justice to these districts. First, in order to do that you must add at least twenty per cent to the 726,000 given by the census as the population of the city of New York, which makes it largely over 800,000, and that would make the city of New York entitled, under an apportionment of the State into thirty-two districts, to seven Senators. I would like to ask the gentleman from New York [Mr. Hutchins], who made so elaborate an argument to prove that that city has been depopulated in the last five years, whether he would like to swear to-day that he does not believe there are not 900,000 souls living in the city of New York, or whether he believes there were anything less in 1865 than 800,000 people living and residing there?

Mr. HUTCHINS—In answer to the gentleman I have to say that I have the same right to suppose a fraudulent—

The CHAIRMAN—The gentleman from New York [Mr. Hutchins] is not in order.

Mr. HUTCHINS—The gentleman assumes that the census of 1860 was a correct census.

Mr. CONGER—I had no reference to that in the question I ask. I ask the gentleman from New York [Mr. Hutchins] or any gentleman representing New York on this floor, whether as a man and a citizen, if he was sworn, he would say he believes the city of New York has anything less than 900,000 souls living in it to-day, or had anything less living in it in 1865, than 800,000. This generally I show by the census, when you come to compare the census by itself, and show an error in its tabulations, that the census must be taken to mean that the city of New York, had in it when the census was taken, over 800,000 souls, and that is confirmatory proof of the statements which have been alleged here, that there were large portions of the city of New York that were not visited by the census takers. The census itself corroborates everything that has been said, in regard to its inaccuracy in that city, and I hope there is a remaining sense of justice left in the mind of this Convention, whenever they finally determine this question of what shall be the representation of the city of New York, to give it its fair, just and proper numerical apportionment, according to a just review of this census. That is all I ask.

Mr. FRANK—We have heard very much here since the opening of this Convention, as to the census of the city of New York, both from the gentleman who has last addressed us [Mr. Conger], and others. Now, if I understand it correctly, the census of 1865 was taken by men sworn to do their duty faithfully and honestly. We are bound first to believe they did so, unless it can be shown that they intentionally committed a fraud or made a mistake. I

do not know as it has ever been shown or stated by any one until this evening that they have done so.

Mr. E. BROOKS—I say on the authority of the Statistical and Geographical Society, on information given to me by a member of that body, that they were incorrecly returned—notoriously so.

Mr. FRANK—In the next place, they make their argument to show us that we ought to give them a larger representation in the Senate, or a greater number of senatorial districts than the report of the committee of this Convention has given them. The gentleman from New York [Mr. Hutchins], corroborated by the gentleman from Westchester [Mr. Greeley], states that at the last election, which was one of the most exciting in New York, they cast no more votes than were cast in five of the rural districts. It would seem to be additional proof that the report of the committee is a fair one for the city of New York. Neither the gentleman who last spoke [Mr. E. Brooks], nor the other gentleman [Mr. Conger], has attempted to answer that, and I would like to hear their explanation.

Mr. E. BROOKS—I would answer that—

Mr. AXTELL—I suppose the gentleman is out of order. He has spoken once.

Mr. FOLGER—I object.

The CHAIRMAN—The Chair is of opinion he is out of order.

Mr. CONGER—I suppose I have the floor. I yielded it to enable the gentleman from Wyoming [Mr. Frank] to ask a question.

The CHAIRMAN—The Chair understood that the gentleman from Rockland [Mr. Conger] vacated the floor.

Mr. CONGER—The Chair is mistaken. I had not consumed my time. The gentleman from Wyoming [Mr. Frank] asked me a question.

Mr. RATHBUN—I rise to a point of order. The gentleman from Rockland [Mr. Conger], when he sat down, said, "That is all I have to say."

The CHAIRMAN—The gentleman from Rockland [Mr. Conger] says he had not vacated the floor. He will again proceed.

Mr. CONGER—I will not make it a question of veracity with the gentleman who last took his seat [Mr. Rathbun]. If I said that, that is sufficient. I will make the answer some other time.

Mr. FRANK—I supposed the gentleman [Mr. Conger] had the floor. I simply rose to ask him a question. I would be glad to have him answer it if no objection is taken.

Mr. SCHELL—I would be glad to add the words, "except a county shall be equitably entitled to two or more Senators," after my amendment.

The CHAIRMAN—The amendment is not in order, the pending motion being to reconsider the vote by which the amendment of the gentleman [Mr. Schell] was lost.

Mr. SCHELL—I ask the unanimous consent of the committee to perfect the paper I sent up.

Mr. ALVORD—I object.

The CHAIRMAN—The amendment is not in order, the motion being to reconsider.

Mr. SCHELL—The motion on the amendment is in the power of the proposer until some action is had by the committee, is it not?

The CHAIRMAN—The Chair will inform the gentleman that his amendment is not before the committee until the vote is reconsidered.

Mr. SEAVER—I understood the gentleman from Rockland [Mr. Conger] to be on the point of taking his seat, when the gentleman from Wyoming [Mr. Frank] rose to ask him a question. I hope he may be permitted to proceed.

Mr. SCHELL—I hope the gentleman will let me complete my amendment.

Mr. ALVORD—I call the gentleman [Mr. Schell] to order.

Mr. E. BROOKS—I call the gentleman from Onondaga [Mr. Alvord] to order. He is not in his place and has not a right to call any member to order.

The question was put on the motion to reconsider the vote by which the amendment of Mr. Schell was lost, and it was declared lost.

The CHAIRMAN—The question now recurs on the amendment proposed by the gentleman from Richmond [Mr. E. Brooks] as amended.

Mr. BICKFORD—I call now for the reading of my amendment.

Mr. SCHELL—I now propose the original paper I presented with this addition as an amendment—

The CHAIRMAN—The Chair is of opinion that it is not now in order.

Mr. CONGER—I appeal from the decision of the Chair.

Mr. SCHOONMAKER—I move that the committee do now arise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Schoonmaker, and it was declared lost on a division by a vote of 29 to 62.

Mr. CONGER—I wish to take an appeal from the decision of the Chair on the offer made by the gentleman from New York, Mr. Schell, to present a new proposition. Unless the Chair misunderstood the gentleman from New York [Mr. Schell]; he presented a further proposition.

The CHAIRMAN—The Chair understood it was an amendment to his former amendment that was lost.

Mr. BICKFORD—I rise to a point of order. The amendment of the gentleman from New York [Mr. Schell] is not in order, because mine was in order first. [Laughter.]

The CHAIRMAN—The Chair is of the opinion, on reconsidering the subject, that the amendment of the gentleman from Jefferson [Mr. Bickford] is now in order.

The SECRETARY proceeded to read the amendment offered by Mr. Bickford.

The CHAIRMAN—The Chair is of the opinion that the amendment proposed by the gentleman from Jefferson [Mr. Bickford] is not in order, as the second section is now under consideration, and he proposes to amend the third and fourth sections.

Mr. SCHELL—I now offer the amendment in the hands of the Secretary, with the addition of the words I suggested.

The SECRETARY proceeded to read the amendment, as follows:

Strike out after the words "four years" and insert "and shall be constituted as follows: an

enumeration of the inhabitants of the State shall be taken, under the direction of the Legislature, in the year 1868 and in the year 1875, and at the end of every ten years after the last mentioned year; and the Legislature shall, at the first session after the return of the enumeration in the year 1868, and upon the return of every subsequent enumeration, apportion the State into thirty-two districts, which shall be numbered from one to thirty-two inclusive; that each district shall contain as near as may be an equal number of inhabitants who are citizens, and shall remain unaltered until the return of another enumeration, and shall consist of contiguous territory. No county shall be divided in the formation of a senate district except such county shall be equitably entitled to two or more Senators. The districts, as the same are now constituted shall remain until the enumeration and apportionment as herein provided shall be made and the first election under this Constitution shall take place in 1869."

Mr. SCHELL—This is an amendment to Mr. Flagler's amendment.

The CHAIRMAN—Mr. Flagler's amendment is not now before the Convention. The amendment now before the Convention is the amendment proposed by the gentleman from Richmond [Mr. E. Brooks], as amended. Does the gentleman from New York [Mr. Schell], move this as an amendment to that.

Mr. SCHELL—Yes, sir.

The question was put on the amendment of Mr. Schell, and it was declared lost.

A count was called for, when the ayes were taken and reported at 24.

The noes were called for, and delegates arose.

The CHAIRMAN—It is evidently lost.

Mr. E. BROOKS—I insist that the negative vote shall be counted. I think it is very doubtful whether there is a quorum present.

The question was again put on Mr. Schell's amendment, and, on a division, it was declared lost by a vote of 24 to 76.

Mr. TAPPEN—The hour of eleven has arrived; the thermometer is at 81° and the stenographers have used up their pencils. [Laughter.] I, therefore, move that the committee rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Tappen, and it was declared lost, on a division, by a vote of 42 to 60.

Mr. SCHOONMAKER—I offer the following amendment. The object of it is to have three Senators in each district, and to have one Senator elected in each district every year.

The SECRETARY proceeded to read the amendment, as follows:

"Strike out the words 'thirty-two' whenever they occur, and insert 'fifteen,' so as to make fifteen senate districts. Strike out the word 'one' whenever it occurs as designating number of Senators for each district, and insert 'three.'"

"Strike out 'four years' whenever it occurs designating terms of office, and insert 'three years.'"

The question was put on the amendment of Mr. Schoonmaker, and it was declared lost, on a division, by a vote of 34 to 66.

Mr. BOWEN—If it is in order I beg to offer an amendment to the amendment of the gentleman from Richmond [Mr. E. Brooks] by arranging terms of office so that one-quarter of the Senators shall go out every year instead of one-half every alternate year.

The CHAIRMAN—It is.

Mr. BOWEN—The amendment is as follows:

Amend by striking out that part providing for the time when the term of office of the Senators first elected shall expire and insert as follows:

"The term of office of those Senators elected for the first, fifth, ninth, thirteenth, seventeenth, twenty-first, twenty-fifth and twenty-ninth districts shall expire in one year, and the term of those elected for the second, sixth, tenth, fourteenth, eighteenth, twenty-second, twenty-sixth and thirtieth districts shall expire in two years, and the term of those elected for the third, seventh, eleventh, fifteenth, nineteenth, twenty-third, twenty-seventh and thirty-first districts shall expire in three years, and the term of those elected in the remaining districts shall expire in four years."

I will detain the committee but a moment. One object in extending the term of office of Senators is that they may have experience, and another object, which is equally important, is that there should be more permanency to the Senate. The amendment I have offered, I think, will effect the purpose more effectually than the one proposed by my colleague.

The question was put on the amendment of Mr. Bowen, and it was declared lost.

Mr. CHESEBRO—I move that the committee rise and report progress.

SEVERAL DELEGATES—No! no!

Mr. CHESEBRO—I say Yes.

The question was put on the motion of Mr. Chesebro, and it was declared lost, on a division, by a vote of 23 to 68.

Mr. S. TOWNSEND—I believe that the committee have several times decided in favor of thirty-two senate districts. The main objection to the proposition offered by the gentleman from New York [Mr. Schell] is the expense of taking a new census of the State, apart from the regular routine in reference to taking the State census. I have an amendment which I propose to introduce somewhere in the article [laughter], and I would like to have the Chair inform me how the article stands at present that I may know where to introduce the amendment.

The PRESIDENT—The Secretary will read the section as at present amended.

The SECRETARY read as requested; "the State shall be divided into thirty-two districts."

Mr. S. TOWNSEND—Right there I propose to bring in this proposition:

Provided, That after the U. S. Census of 1870 is made, the Legislature at its next session shall make a distribution of the State [laughter] into thirty-two contiguous Senate districts upon the basis of the said census.

Mr. ALVORD—I would like to ask the gentleman from Queens [Mr. S. Townsend] a question.

Mr. HATCH—I rise to a point of order. The gentleman from Onondaga has no right to speak—he is not in his place. [Laughter.]

Mr. ALVORD—I rise to a point of order; the gentleman from Erie [Mr. Hatch] has no right to call me to order, he not being in his place.

Mr. S. TOWNSEND—Not having the printed proceedings before me, Mr. Chairman, I am unable to say exactly where my proposition should come in; but the idea I wish to elucidate is this: serious objections have been made to the census of 1865 in the State, the grounds of which have been alluded to by the gentleman from New York [Mr. Schell]. We have, I believe, recognized the impartiality, validity, and correctness of the United States census, and have confidently referred to it in our operations in this State. As indicating the want of reliability in the census of 1865, I will refer to the fact that the breaking out of the war caused a partial cessation of foreign immigration to this country. But the increased demand for labor caused by so large a number of men being absent in the army, caused a tendency on the part of emigration, both foreign and home, toward our larger cities, where the demand for labor was most manifest, and where parties from other localities came in quest of labor. This tendency of unemployed persons toward our large cities, caused a great demand for dwellings, so great that it was impossible, in 1865 particularly, to get a house without paying most exorbitant rents, and even then vast numbers of people were compelled to board; and yet with these facts prominent to every man residing in the city of New York, there was an actual diminution in the population from 1860 to 1865, as shown by the census of 1865. The fact is incredible; and it has been developed that there were large districts which the census-takers omitted to visit entirely. I think there should be no disposition to hesitate to make restitution to the city of New York at the end of five years, of what it is entitled to, if anything, over the representation it now has in the Legislature; and that can be determined by the census taken by the Government of the United States.

The question was then put on the amendment of Mr. S. Townsend, and it was declared lost, on a division, by a vote of 23 to 64.

Mr. TAPPEN—As I believe the Convention can arrive at no practical result by further continuing the session to-night, I move the committee now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Tappen, and it was declared lost, on a division, by a vote of 30 to 61.

Mr. E. A. BROWN—I move to reconsider the vote by which the term of office of Senator was fixed at four years, and I desire to have the motion lie on the table.

The CHAIRMAN—The Chair is of the opinion that the motion is not in order. There has been no vote taken on that distinct proposition by itself if the Chair recollects aright.

Mr. E. A. BROWN—The vote was taken on precisely that proposition.

The CHAIRMAN—It was taken on a division of the question. The motion to reconsider a part of the proposition, which was taken on a division, in the opinion of the Chair, is not in order.

Mr. MERRITT—I suggest that the object desired by the gentleman can be reached in committee by a motion to make a term the least term. We have already settled the matter of the four-years term. In order to reconsider, as I understand it, the gentleman must couple other things with it; and if he makes a motion to reconsider he must take the vote now. It cannot lie on the table.

Mr. E. A. BROWN—I rely upon the Chair entirely for my parliamentary law; and if the Chair is of the opinion that the motion cannot be taken in order, I will not press it.

Mr. WEED—It seems to me that the motion of the gentleman who last addressed the Convention [Mr. E. A. Brown], is a proper one. Although a vote was taken on a division it was decided on a separate and independent vote of the Convention. And the Chairman, if he will think for a moment on the subject, will, I think, see that two of the propositions might have been voted down and the other carried, or one voted down and the other two carried, and it would have been the action of the Convention. If one of these propositions had been voted down and thrown out, certainly the proper and the only motion that could have been made would have been to reconsider the one lost. In reinstating the one that was lost you would not have to throw out the two that were carried. It seems to me, therefore, the motion of the gentleman is proper—to reconsider the vote by which the Convention had inserted “four” instead of “two” years, as the term for which Senators shall be elected.

Mr. E. A. BROWN—If I make a motion that is debatable, could I say what I desire to say, and assign reasons for the motion made?

The CHAIRMAN—The opinion of the Chair is as it stated, but it is willing to be corrected by the committee. The opinion of the Chair is that when a question is divided, and a vote is taken on one part it does not entitle the gentleman to move to reconsider the vote on that part. But when the vote is taken on the entire question, the motion to reconsider must be upon that question.

Mr. E. A. BROWN—As I said, I will take my parliamentary law entirely from the Chair. I will assent to the correctness of the ruling.

The CHAIRMAN—The Chair will suggest to the gentleman he can attain his object by moving an amendment.

Mr. E. A. BROWN—Then I move as an amendment to the proposition as it now stands before the committee to make the number of senate districts and the number of Senators thirty-six, and to make the term of office of Senators two years instead of four years. Mr. Chairman, I desire to state the reasons why I prefer two years instead of four years as the term of office of Senator. This year, 1867, we vote throughout the State for members of the State Senate, nearly the number of the members of the House of Representatives in Congress from this State. In the year 1868 we vote for Representatives in Congress. On the proposition as it now stands we, shall have to vote every two years for one-half of the State for Senators, and at the same time to vote for members of the House of Repre-

sentatives. As I said the other day, I conceive it to be desirable, that at every election there should be as many inducements as practicable, to bring out the voters to the polls. By this pending proposition, as amended, we have all the important officers elected in the years having even numbers, and a few unimportant officers elected in the years having odd numbers. So that electors will feel comparatively little interest in the elections held in the years having odd numbers, and nearly all the interest will center about the elections held in years having the even numbers. I am in favor of having Senators elected one year and Congressmen the next, as now, in order to create an interest among the people at every election, and thus call out as full a vote as practicable. Mr. Chairman, as there seems to be a disposition to stay here to-night, I wish to say a word or two pertinent to this particular proposition. Speaking for myself, from the position in which I was placed by the distinguished gentleman from Kings [Mr. Van Cott] when he argued to this committee that I had, on a previous day, made a fallacious argument in support of the proposition that Senators should be elected by single districts. That portion of my argument to which he alluded was made by me in answer to a suggestion that I read in the newspapers, and which has been repeated over and over again on this floor, both before and since I made these remarks, in some form or other, that the larger the district from which a Senator was elected the better was the Senator. The fair interpretation of these words I take to be that the prospect of electing able and honorable Senators will be more certain if they are elected from large districts than from small ones—in other words, the larger the constituency the better the Senator. In answer to that proposition and for the purpose of combating it, I said that if it was true, why not make four districts or two districts in the State, or elect each Senator from the whole State. For, if the argument is true that the larger the district the better the representative, it is our bounden duty to take such measures as will give us the best Senator to discharge the duties of that important office. It will be better for the people of this State and so far as they form a portion of this nation—and of mankind it will be for the benefit of the whole of mankind. I say, if that argument were true and correct we should adopt it to the full extent, in order to realize the greatest benefits and to accomplish the most beneficial results. Now, there is no fallacy in that argument. My honorable friend, I am sorry to say, on the permanent records of the debates and proceedings of this Convention, has sent me down to posterity as using a fallacious argument. Now, being up, I desire to say one other word—and say it seriously, too. It has been to me a matter of regret that it is assumed by honorable gentlemen of this Convention, that we have habitually a corrupt Legislature within these halls—an assumption that is scandalizing, not only to the legislators that are elected by the people, but scandalizing and defamatory of the intelligent people of this State who elect these representatives. If it be true, as is intimated here, that the representatives that come here, year after year, are corruptionists,

our duty will be best performed by abolishing the Legislature altogether, and by electing a Governor with the power of Louis Napoleon, to nominate and without question to appoint his own Senators—and, if you please, to go through the formality of electing under executive supervision and control, a subservient Corps Legislatif, and thus relieve the people from this great responsibility, which, if these assumptions are true, they have proved themselves so incompetent to perform. For myself, sir, I was glad to hear the remarks of the honorable gentleman from Montgomery [Mr. Baker] and others on that subject, and I regretted to hear the remarks of the honorable gentleman from New York [Mr. Evarts] following in the train of others, in answer to the suggestion which was made, and made upon the basis of historical truth, that the Senate of this State, under our present Constitution had demonstrated itself to be as honorable and as honest as any preceding Senate, for the reason that no man of its members had ever been expelled from the body, or specific charges made against them on which they could be expelled. The answer was, in substance, that the whole body of the Senate was so corrupt that it would not expurgate itself from its dishonored and its corrupt members. Sir, it is an allegation, and an imputation that is undeserved by the Senate of this State, and is an unmerited slander upon the people of this State. Historically, how is it with regard to the charges which have been made of corruption? In 1812, I believe, Governor Tompkins prorogued the Legislature of this State on account of alleged corruption of its members, in connection with the old Bank of America. Charges of bribery and corruption were made against that body, and the Governor prorogued it. Now, sir, if these foul charges which are made against the last Legislature were believed to be true, I ask if the Governor of this State had the power (which perhaps he has not), did he not fail, miserably fail, in the discharge of his duty, that he did not prorogue the Legislature on account of its corruptions, and because they failed to expurgate themselves from their corrupt members? Sir, that Governor has not failed in the discharge of important duties. He has the courage, the high standing in community, the independence, to discharge that duty if it was in his power, and if he believed it ought to be discharged. And I will show you the fact historically, that but a few years since a member of the Assembly, sitting in this hall by virtue of the votes of the people of this very county, was charged with corruption in connection with the exercise of his functions as a member of the Legislature, and a gentleman who is a member of this Convention, and probably within the sound of my voice, reported, after due examination, to the House, charging him with having entertained corrupt propositions with regard to his official influence and action, and he was expelled from that body, and the votes of only eight members of the one hundred and twenty-eight were found recorded against the expulsion. Sir, if that corruption exists, as assumed and alleged, I say we fail in the discharge of our duty if we do not abolish the Legislature altogether and establish again the old Albany re-

gency, which existed previous to 1846, those halcyon days after which my friend from Onondaga [Mr. Andrews] seems to "hanker." [Laughter.] Establish a government such as they have in France or England, or anywhere else, and abandon our representative government, which has proved itself, on account of its liability to corruption and rottenness, unfit to be the instrumentality of expressing the power of a great State like that of New York.

The question was then put on the amendment of Mr. E. A. Brown, and it was declared lost.

Mr. CONGER—I offer the following amendment:

The SECRETARY proceeded to read the amendment, as follows:

Strike out "thirty-two," the number of districts, and insert "eleven."

Strike out "four," the number of years of service, and insert "three."

Strike out "one," the number of Senators for each district, and insert "three."

Amend other phraseology so that one Senator shall be elected each year.

Mr. CONGER—The plan that seems about to be adopted by the majority of the committee fails in many important particulars. You have the old single senate district system, and you have members elected every other year from the alternate districts. What is the first consequence? That you have only one-half of the Senate in at a time, and you have no majority of the Senate retained in place and possessed of experience on the eve of any election, and thus the great conservative powers of a Senate sought to be secured, are effectually swept aside. The first proposition made by the committee in favor of large districts is utterly slaughtered. The great object of attaining conservatism in the Senate, is to have at all times a majority in that body, not exposed to the risk of any new election. Unless you have a majority that remains, with experience, that is personally suggestive of mischiefs, you have no more effective provision against the inexperience of new members than is to be gained by the printed register of the doings of the last body. Sir, the lobby manages legislation by taking advantage of the ignorance of inexperienced and unadvised members, and perhaps also through the insincerity or duplicity of some of the old ones. I remember well, that a claim which was advanced against the State, of nearly \$20,000, from the Sing Sing prison, which was effectually resisted during two regular, and one extra session of the Legislature, in 1852 and 1853, immediately after the assembling of the Legislature in 1854, was brought to the Senate and passed, was sent down to the House and passed, the bill sent to the Governor and signed and the money paid within twenty days after the assembling of the new Legislature. Shortly thereafter, a resolution was presented by a member of the lower house, and the reason of his presenting the resolution was, that somebody had sent in another claim from the same prison of some \$30,000, and he desired to have the opinion of the Attorney-General whether there had been any validity in the claim presented and paid by the State, and if not, whether the money could not be

recovered back, either from the parties, their sureties, or otherwise. Mr. Ogden Hoffman, at that time Attorney-General of the State, sent in a reply to that resolution, in which he said he had carefully examined into the merit of the claim audited and passed, that there had been no validity whatever in it as against the State; and no binding obligation on the State to pay it, but inasmuch as it had been voluntarily paid, the money could not be recovered back. Do you suppose such a state of things could have existed, if any sufficient portion of that Senate could have remained over in their place long enough to meet the new advent of this old trumped up claim against the State? Of what use then is the present plan, in order to prevent the Legislature of this State from being perpetually in the hands of the lobby, year after year, and term after term? Of what use is it, when your lower house expires every year, to have every responsibility cast upon a Senate divided in halves? And with an incoming half of men incompetent of themselves to know the past wiles of the lobby—what guard have you against such a claim as I have referred to being paid by such a Senate? It is all nonsense, in my judgment, to think that you are going to have a conservative body, unless you can maintain at least two-thirds of that Senate always in its seat. The majority have heretofore voted down a proposition to have three-fourths in its seat, and there is no other alternative now but to fall back upon the proposition of keeping two-thirds of that body always in office, in order to resist the combination of the lobby, and the indirect efforts and actions of unprincipled men. This is the proposition I desire to present at this time, not that I have much expectation that it will receive a majority vote of this committee, but it is hoped that the honorable gentleman from New York [Mr. Tilden], who has been detained by sickness, will be able to be here in his place in time to present his views on this subject; for, if I mistake not, this is the plan he favors. On this plan which I have proposed you have a very simple system; you have thirty-three districts virtually, but they are combined in eleven larger districts. The friends of limited representation cannot have much serious objection to this plan; because if two or more districts agree to come together to counsel on nominations, they can place no great hindrance to the choice of the people of suitably well-known candidates; and, although the argument which was directed against four might apply against three, as having a common voice in the nomination as well as in the election, still I hope that on reflection gentlemen may be induced to change their views, and to come back to this as the simplest proposition for organizing the Senate so as to have a conservative portion of that Senate always in its place. You have no objection, such as is forced upon the gentlemen who advocate the single districts, of electing only one Senator in a district, in four years. Here you can elect a Senator in each district every year. I have no desire to detain the committee at this late hour, but I wish to present this proposition, and I present it seriously. Sir, I believe it has merits; it is at least a compromise measure, which may unite a great many persons in this body, who do not like to

adopt the large district system, which divides the State into eight districts, and it would reconcile many who see now the disadvantages and mischiefs resulting from the single district system, to come in with the minority and adopt this plan. I hope, although I have been able but imperfectly to state its merits, it will receive some consideration, if not here, at least in Convention.

The question was put on the amendment of Mr. Conger, and it was declared lost, on a division, by a vote of 23 to 62.

Mr. BICKFORD—I wish, sir, now to offer an amendment.

The SECRETARY proceeded to read the amendment, as follows:

Amend by substituting the following for section 2 of the report:

SEC. 2. The Senate shall consist of thirty-nine Senators, to be elected for three years; and the Legislature for the year one thousand eight hundred and sixty-eight shall divide the State into thirty-nine districts, to be called senate districts; in each of which one Senator shall be elected. The districts shall be numbered from one to thirty-nine inclusive. They shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, and shall remain unaltered until the year one thousand eight hundred and seventy-six. They shall at all times consist of contiguous territory, and no county shall be divided in the formation of a senate district, unless it shall be equitably entitled to two or more Senators. The first election of Senators under this Constitution shall be held in the year one thousand eight hundred and sixty-eight, and the Senators then chosen shall be divided into three classes; the Senators elected in the districts numbered from one to thirteen inclusive, shall constitute the first class; the Senators elected in the districts numbered from fourteen to twenty-six inclusive, shall constitute the second class; and the Senators elected in the other districts shall form the third class. And it shall be determined by lot under the direction of the Senate in the year eighteen hundred and sixty-nine, and during the two first weeks of its session, which of the said classes of Senators shall hold for one year, which for two years, and which for three years. And the Senators in the several classes shall hold office accordingly.

Mr. TAPPEN—I would like to ask the gentleman from Jefferson [Mr. Bickford] if he has any more amendments to offer, if he will not send them all up at one time. [Laughter.]

Mr. BICKFORD—I am entirely satisfied that the proposition to elect Senators for four years will not meet with favor from the people of this State. But there is a disposition to prolong the term, and I therefore have fixed upon this term of three years as an available compromise. I think the Senate should be increased as well as the Assembly, and I propose, if this amendment should meet with favor, to follow it up with an amendment increasing the number of Assemblymen to four times the number of Senate proposed, namely, 156. The advantages of this plan will be apparent to the committee, and it will be unnecessary to detain the committee by any remarks. I think it is the best proposition which

can be offered, embracing the proper term. If the term must be increased, increase it as slightly as possible. I hope it will not be increased over three years, and I trust this amendment will meet the favor of the Committee.

The question was put on the amendment of Mr. Bickford, and it was declared lost, on a division, by a vote of 6 to 76.

Mr. YOUNG—I move that we take a recess for one hour.

Mr. CHAIRMAN—The motion is not in order, in the Committee of the Whole.

The question was then put on the amendment of Mr. E. Brooks, as amended, and it was declared adopted, on a division, by a vote of 76 to 15.

Mr. GOULD—I offer the following amendment, to come in at the end of the second section:

"No person shall be allowed to vote for a Senator who has not paid a town, county or State tax, within twelve months next preceding the election at which he offers to vote."

The question was put on the amendment of Mr. Gould, and it was declared lost.

Mr. E. A. BROWN—I move that the committee do now rise, report progress and ask leave to sit again.

The question was put on the motion of Mr. E. A. Brown, and it was declared lost, on a division, by a vote of 14 to 68.

Mr. BICKFORD—I move that the committee do now report back to the Convention, the article with the amendments, and ask to be discharged from its further consideration.

Mr. GEERY—I rise to a point of order, that the motion of the gentleman [Mr. Bickford] is a renewal in substance of the motion that the committee rise and report progress.

The CHAIRMAN—The Chair rules it is a different proposition.

Mr. SHERMAN—I rise to a point of order, that the motion is not in order, and no such motion can be recognized in Committee of the Whole.

Mr. WEED—No motion of any kind, until the report has been gone through with, can be made except the motion to rise and report progress.

The CHAIRMAN—The Chair is inclined to the opinion that it is not in order, the article not having been gone through with, as the rule requires.

No further amendments being offered to the second section, the Secretary proceeded to read the third section, as follows:

§ 3. An enumeration of the inhabitants of the State shall be taken, under the direction of the Legislature, in the year one thousand eight hundred and seventy-five, and at the end of every ten years thereafter; and the said districts—except the first district—shall be so altered by the Legislature at the first session after the return of every enumeration, that each district shall contain as near as may be an equal number of inhabitants who are citizens of the State, and shall remain unaltered until the return of another enumeration, and shall consist of contiguous territory. No county shall be divided in the formation of a senate district.

Mr. MERRITT—I move to amend the third section, as follows:

Strike out of the fourth and fifth lines, "except the first district." Strike out in the tenth, eleventh and twelfth lines, "and the first district shall be entitled to such additional Senators as its citizen population shall, in proportion to that of the entire, entitle it." Also strike out the last clause, "No county shall be divided in the formation of a Senate district."

Mr. C. C. DWIGHT—Instead of striking out the last clause, "No county shall be divided in the formation of a Senate district," I would suggest that the gentleman add to that clause, "unless such county shall be entitled to more than one Senator."

Mr. MERRITT—I will accept that amendment.

The question was put on Mr. Merritt's amendment, and it was declared carried.

Mr. BURRILL—I desire to offer a substitute for the entire section:

The SECRETARY proceeded to read the substitute, as follows:

The Legislature shall, at the first session after the next United States census, alter the districts hereby created on the basis of said census, so that each district shall contain, as near as may be, an equal number of inhabitants, excluding aliens, and shall consist of contiguous territory, and shall remain unaltered, until the next enumeration of the inhabitants of the State, which may thereafter be made under the direction of the Legislature.

An enumeration of the inhabitants of the State shall be taken, under the direction of the Legislature, in the year 1875, and at the end of every ten years thereafter. After the said last mentioned enumeration, the said districts shall be altered by the Legislature at its next succeeding session on the basis of said last mentioned enumeration, so that each district shall contain as near as may be an equal number of inhabitants, except aliens, and shall consist of contiguous territory, and the Legislature shall, at the session next, after each succeeding enumeration which may be made under the authority of the State, alter the said districts on the basis of said enumeration, so that said district shall contain as near as may be an equal number of inhabitants, excluding aliens. No county, other than such as may be entitled to at least two Senators, shall be divided in the formation of such districts.

Mr. BURRILL—The only difference between the amendment proposed by myself and the report of the committee, is to provide for a re-apportionment after the completion of the Federal census in 1870. That census will be taken under the direction of the United States authorities, and of course without any expense to the State, and it is fair to presume that the United States will take it fairly and equitably, and will endeavor, as accurately as possible, to attain a correct enumeration of the entire inhabitants of this State. All my amendment calls for, is, that after the Federal census shall be taken, a new apportionment shall be made on the basis of that census; and then a direction that the Legislature shall order a census in 1875, and each ten years thereafter; and after such State census, an apportionment shall be had on the basis of that census, so that the districts may contain, as nearly

as may be, an equal number of inhabitants, except aliens; and then it provides that no county shall be divided, other than those who are entitled to at least three Senators. I think that enough has been said here to show that the census of 1865 was inaccurate, and that after the United States census of 1870, an apportionment should be made on the basis of that census.

Mr. PARKER—I desire to ask the gentleman a question, if it has occurred to him, what would be the condition of things under his amendment, if the United States government should not order a census in 1870?

Mr. BURRILL—It is fair to presume that as it has heretofore ordered them, it will do so again; if it does not, then that portion of the Constitution will become nugatory, and we shall remain exactly as we are now until the State census of 1875.

Mr. OPDYKE—I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Opdyke, and it was declared lost, on a division, by a vote of 21 to 66.

Mr. CHESEBRO—I had prepared an amendment somewhat similar to that of my friend from New York [Mr. Burrill], and I am in favor of his amendment, as I presume he would have been of mine if I had first proposed my amendment. My amendment would have included the further provision to strike out the words in line eight, "who are citizens of the State," leaving the section as it was left in the Constitution of 1846 and the Constitution of 1821—that is, it raises the question as to whether or not the language "citizens of the State" means electors of the State, or whether it means inhabitants of the State. I was induced to look at this question for the reason that I saw the committee, in reporting this article, had changed the phraseology from that which was in the Constitution of 1846 and the Constitution of 1821, and had gone back to what is in effect, the Constitution of 1777. As understood by the committee, the Constitution of 1777 provided the ratio of representation should be based upon electors of the State. The Constitution of 1821 provided that the ratio of representation should be based upon the inhabitants of the State. The Constitution of 1846 varied the language of the Constitution of 1821, and provided that representation should be based upon the inhabitants of the State, excluding aliens and persons of color not taxed.

Mr. MERRITT—If the gentleman will allow me a moment, I am willing to accept his amendment to strike out the words "citizens of the State," if I can insert after the word "State" the words "excluding aliens."

Mr. CHESEBRO—That is my amendment. If the gentleman wishes to speak on my amendment I have no objections.

The question was then put on the amendment of Mr. Burrill, and it was declared lost.

Mr. CHESEBRO—My amendment is simply to strike out the words "citizens of the State," but not to insert the words "excluding aliens."

Mr. MERRITT—I cannot accept it in that way—

Mr. CHESEBRO—What I desired by my amendment originally was to raise the question, which has been somewhat mooted both in committee and in this Convention, as to what constitutes a citizen. I supposed from the report made here that the design was to go back to the Constitution of 1777, but it seems I was misled by some remarks made by the gentleman from St. Lawrence [Mr. Merritt], and I have nothing further to say upon that point. I will state the reason I desire to make this amendment. As I understand, after an examination, the definition given by the lexicographers and the best dictionaries in the law library, the word "citizen" means elector, and that as such elector, a person has a right to vote; and I was surprised to find in this section this language used, which would take us back to 1777.

Mr. MERRITT—The language was inadvertently used; the idea was that all were citizens, although they might not be voters. I am very willing to strike out that part of it.

Mr. CHESEBRO—It brings it down to this point, as to whether any representation shall be based upon all the inhabitants of the State, or whether it shall be based upon the inhabitants, excluding aliens. I am opposed to excluding any person who is governed by the laws of the State from the ratio of representation. This committee and the Convention have stricken out from the Constitution of 1846 one class of citizens by elevating them into citizenship, who were formerly excluded from the ratio of representation, that is, the class of persons of color who were not taxed; they have included them by raising them into citizens. I say it is unjust and unfair to exclude from the ratio of representation that class of citizens known as aliens. I believe this to be the true principle of government that the ratio of representation should be based upon all the inhabitants who are governed by the laws passed by the Legislature elected on that ratio of representation. I believe that should be the principle adopted in this Constitution. They are taxed, they are required to perform the duties of all citizens and of all persons, yet they are not included in the ratio of representation. Now, there is no good end attained by this discrimination. Instead of taking out one class I say take in the whole.

Mr. BARKER—I only desire to make one explanation. This expression which is different from the language now used in the same section of the same chapter of the Constitution of 1846, was not changed with a design to change the rule. The expression should, in my judgment, incorporate the language of the present Constitution, so that it should read "to contain as near as may be, an equal number of inhabitants of the State, excluding aliens." Hence, if we strike out the words "who are citizens of the State" and insert "inhabitants of the State, excluding aliens," then we will get the exact language that is in the present Constitution, and will exclude aliens from representation.

Mr. COMSTOCK—As I understand it, if the amendment of the gentleman from Ontario [Mr. Chesebro] prevails, the basis of the representation of this State will be the inhabitants of the State,

In other words the population pure and simple, excluding no class of people. I am in favor of that amendment. If that proposition prevails, the rule of representation in the State of New York will conform to that of every State in the Union, except one, and will conform also to the Constitution of the United States. We all know that the rule of representation in the Constitution of the United States was "all free persons and three-fifths of all other persons," which meant slaves. Since slavery is abolished the rule of representation, as now fixed, is the population of the United States pure and simple, excluding no class of people, unless it be Indians who are not part of our nationality. I have looked over the Constitution of the States and find that the State of Maine is the only State whose representation is based upon the citizen population, excluding aliens. The greater number of States have adopted the population, or all the inhabitants of the State. Several adopt the white population; but not one of them except the State I have mentioned adopts the representation which is now proposed for the State of New York, although I admit it has been the rule in this State since 1862. I think myself we had better conform to that rule which prevails generally in this country. I am not convinced that there is any reason for excluding aliens from the basis of representation—they have all the rights and immunities of citizens, except the political privilege of exercising the elective franchise. A very large portion of them have declared their intention to become citizens of the United States. They are authorized by our laws to hold real property. Without statute laws, but by the common law they are possessed of personal property; they are taxed; they are elements of wealth and power and of progress; they are thoroughly incorporated into the society of the State. I am not convinced of any reason for excluding them from the basis of representation. I am, therefore in favor of the amendment of the gentleman from Ontario [Mr. Chesebro].

Mr. HARDENBURGH—I desire to say a single word in respect to the amendment now offered by the gentleman from Ontario [Mr. Chesebro]. It simply seeks to strike out of this report in the third section the words "who are citizens of the State."

Mr. MERRITT—I accepted that striking out of the words, and wished to insert other words.

Mr. CHESBRO—I supposed the gentleman did not accept it, without a modification.

Mr. HARDENBURGH—I desire to call the attention of the chairman of the committee that reported this article, to the fact that while the committee has taken the census as reported here in our Manual, they have added to it that class of people who have been enfranchised—if I may use the term—by this Convention. I understand they have incorporated into this figure which they use, as the ratio of representation, the negro population that has been now enfranchised, amounting to about 45,000. What I desire also to call attention to, is the very singular fact which seems to have been lost sight of, by every gentleman who has addressed the committee (leaving out of view for the moment the definition of aliens, which I understand this

committee intended to give, as being those sojourning in the country, who are really foreign citizens), which is, that every single child who is born of those aliens who sojourn in the land is a native born citizen, and declared by the law of this State to be such, every one of them. The first breath they draw makes them a citizen of this State, and of course an inhabitant of this State. I refer to the case of Monroe, reported in Barbour, 25 or 26, where the question was up before the Supreme Court of this State, where it is declared that every single child born of a sojourner here, although he be an alien, is a citizen of the State. How many are there now?

Mr. T. W. DWIGHT—They are not excluded.

Mr. HARDENBURGH—They certainly are.

SEVERAL DELEGATES—If they are not aliens, they are not.

Mr. HARDENBURGH—Certainly not, if they are not aliens, but it is to the *children of aliens born* on our soil that I refer. They are not included although citizens. I cannot comprehend what gentlemen mean by this particular construction. The point I wish to make is, that the committee, in making this report, have included 45,000 negroes, and have excluded in their estimate, by which they make up their ratio, over 125,000 white children of alien citizens, who are citizens. That I say is the fair purport and meaning of that report. That is, in fact, what you have done in this report; you have added to, and included in it, this negro population of the State, and have actually excluded those who are white inhabitants and citizens of the State, children of aliens, but children born on the soil. I submit, therefore, that the committee, in getting the average from which they have obtained their ratio, have in fact left out a portion of our population who are really inhabitants and citizens of the State.

Mr. CONGER—When I addressed you the other night I stated at the outset, and in very clear terms, the grounds of my objections to the scheme of the committee, to be principally to the basis of their report, and to the mode of distribution of senate districts proposed by them. The remarks I then made were either misapprehended or they were taken unnecessarily as a ground of offense, by two gentlemen of the committee. One of them, who complained of the remarks submitted by myself and by the gentleman from Richmond [Mr. E. Brooks] representing those two counties beginning with "R," which, in his mind's eye, appear intent to "rasp" and "rack" and "ruin" the structural contrivances of the committee, censured us very severely for the remarks used, which he supposed to be personal, and charged that we designed to attack the report unfairly. The honorable gentleman from Ulster [Mr. Cooke], like one who had rubbed his eyes after waking, came in with the declaration that if he had thought of it sooner he would have done it better and then offered in his place before he sat down to make a better and more equitable apportionment as between the first three districts. Could any attack upon the report be more ominous than this? Now, sir, when I made the remarks alluded to, which were necessarily compressed, and within the limits of a twenty minutes speech, glancing as I did over so large an amount of sta-

tistics and other data, when I alluded very briefly to what was in the Constitutions of 1821 and 1846, it was very far from my design to throw the honorable gentleman on my right [Mr. Barker] into an ambush.* I only regret to say that he fell very easily into it. That honorable gentleman paid me the compliment for having in his judgment a greater claim to his regard for my dialectics than for my powers of legal construction. The gentleman was wholly awry as to my design. It was far from my purpose to undertake, in a Convention of Constitution-mongers, to give a legal interpretation of the meaning of words that were in those Constitutions, which, moreover, I quoted at length, and without reference at all to their legal construction. My intention, then, was to get at the political idea that influenced the framers of those Constitutions; and I could have shown very clearly and conclusively, had time permitted, that the political idea was, as I stated it, to exclude those who were not to be taxed, under the general designation of aliens, paupers and persons of color. Now, when the Convention of 1820 was summoned, there was no such fear in existence in the public mind as that which obtained after the revolutionary war, that aliens were going to take possession of this fair State and turn it back into the realms of King George. In 1820 the people of this commonwealth were anxious to have aliens come here, settle on and purchase in the western wilds of the State, and they favored the passage of a law that on declaring their intentions they should be permitted to acquire and hold property, thereby becoming taxed, should be enrolled in the militia, and enjoy all immunities of citizenship in the first degree, so that the political idea of taxing aliens was equivalent to the political idea of engrafting them on the stock of citizenship. The gentleman will say an alien did not become a citizen because he declared his intentions. I deny that proposition, sir, and there was a noble son of New York (Mr. Secretary Marcy) who, in his place at the head of the foreign affairs of the United States, held the converse of that proposition. Moreover he demanded of the Austrian government, under peril of the American cannon, the rendition of Kotzta, who was no more a citizen, as the gentleman from Chautauqua would say, than this, that he had only declared his intention of becoming such. But to pass on, if the doctrine established in the State of New York, which has been so clearly pointed out by my honorable associate from Onondaga [Mr. Comstock], had been as completely and fully understood and acted on lately as it was twenty-five years ago, no great harm or hardship would have eventuated as that which now counts out 400,000 souls from the basis of inhabitancy, an act of excision resulting from the reckless manner in which this census has been taken. Does any man in his senses believe there are existing in the State of New York at this time ten thousand persons of foreign birth who have not declared their intentions, unless they mean to include the women and the servant girls in our families? And if these, does he believe that they have the *animus revertendi* or that their allegiance to foreign powers unrenounced is

dangerous to the future security of the commonwealth? If the object of the exclusion of persons on the ground of alienage is to compel them to embrace the earliest opportunity of becoming citizens then I insist that a proper and adequate instruction should be given to those who take the census to discriminate between those who have so declared and those who have not, counting in also their families. But it is clear that no such discrimination has been made in this census, or will be made in taking any census, as long as gentlemen in power insist at this day that people shall be excluded from the basis of inhabitancy and representation because they, of alien birth, are not fully admitted to the ranks of voting population. Now, sir, can the State of New York, in adopting its Constitution in 1867, afford to be less liberal than the Constitution of the United States? If it is right and proper for us to exclude aliens from the basis of representation, I ask, gentlemen, why should the Constitution of the United States admit such persons in their basis of representation? No, sir, when we go so far as to relieve the negro from the ban that has been placed upon him, not only in the Constitution of the United States but in the Constitution of the State of New York, let us carry our New York learning far enough at least to come up to the doctrine of the United States government, and let us base our future representation on inhabitancy, without any restriction whatever.

The question was put on the amendment of Mr. Chesebro, and it was declared lost.

Mr. WEED—I rise to a point of order. I called for a count before the Chair decided the vote.

Mr. E. BROOKS—I did so, too; I raised my voice as loud as I could with propriety.

The question was again put on the amendment of Mr. Chesebro, and it was declared lost, on a division, by a vote of 25 to 61.

Mr. BARKER—I move to strike out of section 3, line 8, the following words: "who are citizens," and at the end and after the word "State" insert the words, "excluding aliens."

Mr. MERRITT—You do not want the word "or" stricken out.

Mr. BARKER—I would strike out the words "who are citizens," and after the word "State," insert the words "excluding aliens."

Mr. MERRITT—I accept that amendment.

Mr. MASTEN—I offer the following amendment: after the word "aliens," insert "who have not declared pursuant to law their intentions to become citizens of the United States."

The question was put on the amendment of Mr. Masten, and it was declared lost, on a division, by a vote of 30 to 60.

Mr. E. BROOKS—I propose to amend the amendment moved by the gentleman from St. Lawrence [Mr. Merritt], if he accepts it, wherein he proposes to exclude aliens, by inserting after the word "aliens" the words "not taxed," so that the class of persons not included shall not be taxed.

Mr. MERRITT—I do not accept it.

The question was then put on the amendment of Mr. E. Brooks, and it was declared lost, on a division, by a vote of 23 to 58.

The question then recurred on the amend-

ment of Mr. Merritt, and it was declared carried.

Mr. MERRITT—I now move that the committee rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Merritt, and it was declared carried, on a division, by a vote of 49 to 45.

Whereupon the committee rose, and the President resumed the Chair in Convention.

Mr. FULLER, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Legislature, its Organization, etc., had made some progress therein, but not having gone through therewith, had instructed their chairman to report that fact to the Convention, and ask leave to sit again.

The question was put on granting leave, and it was declared carried.

Mr. TAPPEN—I move that the Convention meets to-morrow morning at nine o'clock.

Mr. BROOKS—I move to strike out "nine" and insert "eight."

Mr. WEED—Will not an adjournment till to-morrow morning at nine o'clock carry us over until Friday morning?

The PRESIDENT—The Convention, when it adjourns, will adjourn till *this* morning, at ten o'clock.

The question was then put on adjourning, and it was declared adjourned.

So the Convention, at a quarter past one o'clock A. M., adjourned.

THURSDAY, August 8, 1867.

The Convention met at ten o'clock A. M.

Prayer was offered by Rev. R. H. ROBINSON.

The Journal of yesterday was read by the SECRETARY, and approved.

Mr. S. TOWNSEND presented the petition of Gideon Frost, of Queens county, in relation to legislative corruption.

Which was referred to the Committee on Official Corruption.

Mr. BARTO presented the petition of A. Morehouse, and others, in reference to the appointment of a Superintendent of Public Instruction.

Which was referred to the Committee on Education.

Mr. PAIGE presented a petition from the common council of the city of Schenectady, representing that the police government of said city by the police commissioners of the Capital Police district imposes a heavy and unnecessary burden upon that city, and asking that the further exercise of such police government by such police commissioners be prohibited.

Which was referred to the Committee on Cities, etc.

Mr. GRAVES presented the petition of G. C. Hibbard, and eighty-seven others, of Springfield, Erie county, asking that a provision be incorporated into the Constitution prohibiting the sale of intoxicating liquors as a beverage.

Which was referred to the Committee on Adulterated Liquors.

Mr. STRATTON presented the petition of the officers of the United Piano-forte Makers, and 836

members thereof, of the city of New York, on the same subject.

Which took the same reference.

Mr. HUNTINGTON—I ask leave of absence for ten days on account of indisposition.

There being no objection, leave was granted.

Mr. MASTEN—Mr. Potter, of Erie, desired me to ask leave of absence for him from this evening until a week from next Tuesday morning. He has special business of importance, which demands his attention.

There being no objection, leave was granted.

Mr. CLINTON—I ask leave of absence from this evening's session until Tuesday morning. My family are so situated that I deem it my duty to visit them.

There being no objection, leave was granted.

Mr. YOUNG—I ask leave of absence from the adjournment this week until Wednesday evening next.

There being no objection, leave was granted.

Mr. ALVORD—I call from the table the motion made by me yesterday, by which the Convention decided to adjourn on each and every Monday evening at half-past seven o'clock, and which motion laid over under the rule. I wish to state in that regard that under the arrangement—

Mr. E. BROOKS—I rise to a point of order: a motion to take from the table a resolution is not debatable.

Mr. ALVORD—I am not debating any such question, and if the gentleman from Richmond [Mr. E. Brooks], will listen, he will understand that I am correct. It is a motion to reconsider, which was laid on the table, and under the rule it comes up on call, as a matter of course.

Mr. E. BROOKS—I submit that the motion is not debatable.

The PRESIDENT—The Chair holds that it is debatable, if the original proposition was debatable.

Mr. ALVORD—All I have to say in that regard is, that under the rule we now have, we adjourn each alternate Friday from one o'clock until half-past seven P. M. on the succeeding Monday, and that this proposition is an addition thereto. And, as I understand from many gentlemen, they voted yesterday in favor of the proposition of the gentleman from Westchester [Mr. Tappen] under a misapprehension, supposing that on each and every Monday morning we were compelled to meet at 10 o'clock, I, therefore, call for the reconsideration of that vote, and upon that I move the previous question.

The question was put upon ordering the previous question, and it was declared carried.

The question was then announced on the motion of Mr. Alvord to reconsider.

Mr. GREELEY—I call for the ayes and noes. A sufficient number seconding the call, the ayes and noes were ordered.

The SECRETARY proceeded with the call; and the motion was carried by the following vote:

Ayes—Messrs. A. F. Allen, Alvord, Andrews, Archer, Axtell, Barker, Barto, Bell, Bickford, E. P. Brooks, E. A. Brown, W. C. Brown, Case, Champlain, Clarke, Cooke, C. C. Dwight, T. W. Dwight, Endress, Flagler, Folger, Frank, Fuller, Gould, Greeley, Hadley, Hammond, Hand, Harris,

Hitchcock, Houston, Hutchins, Kinney, Landon, Lapham, Larremore, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merwin, Opdyke, C. E. Parker, President, Prindle, Rathbun, Rumsey, L. W. Russell, Seaver, Smith, Spencer, Stratton, Van Campen, Van Cott, Wakeman, Wales, Williams—58.

Noes—Messrs. C. L. Allen, Baker, Ballard, Barnard, Beadle, Bergen, Bowen, E. Brooks, Burrill, Carpenter, Chesebro, Clinton, Comstock, Conger, Corbett, Corning, Fowler, Garvin, Grant, Graves, Gross, Hardenburgh, Hatch, Hitchman, Huntington, Jarvis, Kernan, Ketcham, Krum, Law, A. R. Lawrence, Loew, Masten, Mattice, Monell, More, Morris, Paige, A. J. Parker, Pond, Reynolds, Rolfe, Roy, Schell, Schoonmaker, Seymour, Sheldon, Sherman, Strong, Tappen, S. Townsend, Weed, Wickham, Young—54.

Mr. TAPPEN—I move the resolution do lie on the table for the present.

Mr. ALVORD—I rise to a point of order, that the previous question having been moved the resolution cannot be laid on the table.

The PRESIDENT—The point of order is well taken.

Mr. A. J. PARKER—The previous question was only on reconsideration.

The PRESIDENT—The previous question attaches to all the incidents of the pending proposition.

Mr. HARDENBURGH—I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The SECRETARY proceeded to read the resolution of Mr. Tappen, as follows:

Resolved, That hereafter the sessions of the Convention on Mondays shall commence at half-past seven o'clock P. M.

The SECRETARY proceeded with the call of the roll on the resolution as read, and it was declared lost by the following vote:

Ayes—Messrs. C. L. Allen, Archer, Baker, Ballard, Barnard, Beadle, Bergen, Bowen, E. Brooks, Burrill, Carpenter, Chesebro, Cochran, Comstock, Corning, Daly, Fowler, Fullerton, Garvin, Grant, Graves, Gross, Hardenburgh, Hitchman, Huntington, Jarvis, Kernan, Ketcham, Krum, Larremore, Law, A. R. Lawrence, Loew, Masten, Mattice, Monell, More, Morris, Nelson, Paige, A. J. Parker, Pond, Potter, Rolfe, Roy, A. D. Russell, Schell, Schoonmaker, Schumaker, Seymour, Sheldon, Sherman, Strong, Tappen, S. Townsend, Weed, Wickham, Young—56.

Noes—Messrs. A. F. Allen, Alvord, Andrews, Armstrong, Axtell, Barker, Barto, Beals, Bell, Bickford, E. P. Brooks, E. A. Brown, W. C. Brown, Case, Champlain, Clarke, Cooke, Corbett, C. C. Dwight, T. W. Dwight, Endress, Flagler, Folger, Frank, Fuller, Gould, Greeley, Hadley, Hammond, Hand, Harris, Hitchcock, Houston, Hutchins, Kinney, Landon, Lapham, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Meritt, Merwin, Opdyke, C. E. Parker, President, Prindle, Prosser, Rathbun, Reynolds, Rumsey, L. W. Russell, Seaver, Smith, Spencer, Stratton, Van Campen, Van Cott, Wakeman, Wales, Williams—62.

Mr. McDONALD—I call up for consideration

the motion I made in regard to going into Committee of the Whole one hour after we meet each day.

Mr. WEED—If I recollect right that motion was laid on the table by a vote of the Convention.

Mr. McDONALD—The motion I call up was not tabled by a vote.

The PRESIDENT—The Chair is informed that it was not laid on the table.

The SECRETARY proceeded to read the motion of Mr. McDonald, with the pending amendment thereto, as follows:

Pursuant to previous notice, **Mr. McDONALD** moved to amend the rules by adding thereto the following:

RULE—The Convention will, unless it shall otherwise order, go each day into Committee of the Whole on any general or special order pending one hour after it convenes, unless before that time that order of business may have been reached.

Mr. SHERMAN moved to amend the motion of Mr. McDonald by substituting therefor the following:

RULE 4. It shall be in order after the expiration of one hour after the reading of the Journal to move that the Convention go into Committee of the Whole on the business committed to it; provided the appropriate order of business be not sooner reached.

Mr. SHERMAN—I do not see that the adoption of any rule like the one proposed is essential to the regulation of our business. If anything of the kind is to be adopted it must be in a modified form from the proposition offered by the gentleman from Ontario [Mr. McDonald]. By his proposition, at the expiration of the morning hour, so called, the pending business, whatever be its nature, must be interrupted peremptorily, and without motion we must go into a Committee of the Whole. The action of this rule may deprive the Convention of the power of acting upon the business that should be acted upon at once, and throw it over to another day. My substitute proposes a rule that will permit the Convention to go into Committee of the Whole, if it desires to, at the expiration of the hour, but does not absolutely require it.

Mr. McDONALD—The only difference between the rule suggested by the gentleman from Oneida [Mr. Sherman] and myself is this. By the rule that I suggest this Convention will go into Committee of the Whole one hour after it meets, unless it then otherwise orders. When the hour arrives, if there is any important business, more so than the regular order of business before the Convention, on motion of any member, it can, by a majority vote, still continue its present business, but otherwise it will go into Committee of the Whole. By the resolution offered by the gentleman from Oneida [Mr. Sherman], it makes, as it were, the motion to go into Committee of the Whole, a privileged question, which can be made at any time during the day one hour after we meet. I have only this to say in favor of the first rule. As general and special orders before the committee are supposed to be the most important business, I take it for granted it ought to be attended to, unless the Convention otherwise orders. It seems to me that

after the reports of the important committees we have had, which are now before us for consideration, this Convention ought not to be willing to use over one hour in the consideration of the other business of the Convention, but ought to be willing and ought to make it a rule, that one hour having been spent in these side questions, this Convention, unless it otherwise orders, shall proceed to the consideration of the various reports which are of so much importance. I now move the previous question.

Mr. LARREMORE—I move the whole subject do lie on the table.

The PRESIDENT—The motion for the previous question takes the precedence.

The question was put upon the motion ordering the previous question, and it was declared carried.

The PRESIDENT announced the question to be upon the substitute offered by Mr. Sherman, for the rule moved by Mr. McDonald, and it was declared adopted—ayes 89.

The question then recurred on the adoption of the rule moved by Mr. McDonald as amended by the adoption of the substitute, and it was declared adopted—ayes 93.

Mr. ARCHER—I call up for consideration the resolution offered by my colleague [Mr. Ketcham] the day before yesterday, in relation to the correction of the Journal.

The SECRETARY proceeded to read the resolution as follows:

Resolved, That the proceedings recorded upon the journal declaring certain members of this Convention in contempt at the session of this Convention held at seven and one-half o'clock P. M. on the fifth of August, 1867, and the recitals in said Journal declaring that certain members were brought to the bar of the Convention under charge of the sergeant-at-arms, and excused, etc., be expunged from the Journal of this Convention.

Mr. GREELEY—I move the previous question.

The question was put upon ordering the previous question, and it was declared carried.

Mr. FOLGER—I call for the ayes and noes on the resolution.

A sufficient number seconding the call the ayes and noes were ordered.

The Clerk proceeded with the call of the roll, and the resolution was adopted by the following vote:

Ayes—Messrs. C. L. Allen, Andrews, Archer, Armstrong, Axtell, Baker, Ballard, Barnard, Beadle, Bowen, E. Brooks, E. A. Brown, Burrill, Carpenter, Champlain, Chesebro, Clarke, Comstock, Corbett, Corning, Daly, T. W. Dwight, Endress, Fowler, Francis, Frank, Fullerton, Garvin, Graves, Gross, Harris, Hatch, Hitchman, Houston, Jarvis, Kernan, Ketcham, Krum, Landon, Larremore, Law, A. R. Lawrence, Loew, Masten, Mattice, Monell, More, Morris, Paige, A. J. Parker, C. E. Parker, Pond, Potter, Rathbun, Rolfe, Roy, Schell, Schoonmaker, Seymour, Sheldon, Sherman, Spencer, Stratton, Strong, Weed, Wickham—66.

Noes—Messrs. A. F. Allen, Alvord, Barker, Bell, Bergen, Bickford, W. C. Brown, Case, Clinton, Conger, Cooke, Duganne, C. C. Dwight, Field, Flagler, Folger, Fuller, Grant, Greeley, Hadley, Hammond, Hand, Hitchcock, Kinney, Lapham,

A. Lawrence, M. H. Lawrence, Ludington, Meritt, Merwin, Opdyke, President, Prindle, Prosser, Reynolds, Robertson, Rumsey, A. D. Russell, L. W. Russell, Seaver, Smith, M. I. Townsend, S. Townsend, Van Campen, Van Cott, Wakeman, Wales—47.

Mr. SHERMAN—I offer the following resolution, but do not desire action on it to-day:

The SECRETARY proceeded to read the resolution:

Resolved, That until otherwise ordered, the hour of meeting of the Convention on Mondays shall be seven o'clock P. M.

Which was laid on the table for future consideration.

Mr. PROSSER offered the following resolution:

Resolved, That the committee on Canals have authority to attend personally until Friday and Saturday of this week, or authorize a sub-committee of their number to do so, at such place as they think proper, to take testimony and make personal examination as to the capacity of the locks upon the Erie canal to do the business and as to the capacity of the prism for larger locks.

Mr. HARDENBURGH—I desire to investigate that proposition, and would therefore like to have it lie over for another day.

The PRESIDENT—The resolution giving rise to debate it will lie over under the rule.

Mr. SCHILL offered the following resolution:

Resolved, That it be referred to the Committee on the Finances of the State, etc., to consider the expediency of making provision in the Constitution, that all debts now owing by the State, contracted prior to 1st January, 1862, shall, with the interest hereafter to accrue thereon, be paid in coin, and also that all debts which may hereafter be contracted by the State, shall, with the interest to accrue thereon, be paid in coin.

Which was referred to the Committee on Finance.

Mr. KETCHAM offered the following resolution:

Resolved, That the sergeant-at-arms be and he is hereby directed to cause the street between the capitol and Congress Hall to be closed.

The question was put on the resolution of Mr. Ketcham, and it was declared adopted.

Mr. WILLIAMS offered the following resolution:

Resolved, That further debate in Committee of the Whole on the report of the Standing Committee on the Legislature, its Organization, etc., be limited to five minutes, and that at one o'clock to-day the article be reported to the Convention and immediately considered, and continue the special order until disposed of.

The question was put on the resolution of Mr. Williams, and it was declared adopted.

Mr. POND—I wish to ask to be excused from attendance until Tuesday morning next, on account of important business that demands my attention.

There being no objection, leave was granted.

Mr. LANDON—I call for the consideration of the resolution offered by me last Friday.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That the previous question may be

applied to the particular section of an article, or other question under consideration, without including the whole article or main question.

Mr. LANDON—As the previous question is now applied in this Convention, it applies to the whole article and precludes any amendment to the particular section. I desire by this resolution to leave it in the power of the Convention to apply the previous question to the particular section.

The question was put on the resolution of Mr. Landon, and it was declared adopted—ayes 79, noes 6.

Mr. FIELD offered the following resolution:

Resolved, That it be referred to the Committee on State Prisons, and the Prevention and Punishment of Crime, to inquire into the expediency of abolishing the death penalty.

Which was referred to the Committee on State Prisons, etc.

Mr. LAPHAM—I call for the consideration of the resolution offered by me on Tuesday.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That the roll of delegates be called after the reading of the Journal each day, and the names of all delegates absent without leave, shall be entered in the Journal for the day.

Mr. WEED—I would suggest to the gentleman from Ontario [Mr. Lapham] that any gentleman who pleases can demand the call of the roll any time after the reading of the Journal.

The PRESIDENT—The Chair so understands.

Mr. WEED—This resolution simply compels the Convention to sit here and fritter away its time in calling the roll, when there is no necessity for it. If there are one hundred and fifty members present there is no need of calling the roll; and to call it will simply take up the time of the Convention with that unimportant matter instead of discussing the proper questions before it. The gentleman from Ontario [Mr. Lapham], who feels it his duty to put every man on the record who is not present, if he is himself in his place, all he has to do is to get up and say he wishes the roll called. But, I ask if it is proper or right for us to say, whether every one of the Convention are here, or a few absent, a half hour or twenty minutes, after the appointed hour of meeting, shall be taken to put gentlemen upon the record as being absent, when, in fact, they may be here nearly all the day, and thus needlessly take up the time of the Convention?

Mr. BARKER—I congratulate the gentleman from Clinton [Mr. Weed] upon his conversion; after the motion he proposed to this committee last night and his remarks I am glad to see reformation has taken place.

Mr. WEED—I do not understand what the gentleman means.

Mr. SPENCER—I move the previous question.

The question was put upon ordering the previous question, and it was declared carried.

The question then recurred on the resolution of Mr. Lapham, and it was declared lost.

Mr. HARDENBURGH—A moment since I interposed an objection to the consideration of a resolution offered by my friend from Erie [Mr. Prosser], to authorize the Canal Committee to take

testimony; but upon an examination of that resolution I now desire, in if order, to withdraw my objection.

Mr. McDONALD—I move this Convention do now resolve itself into a Committee of the Whole.

The PRESIDENT—The Chair would inform the gentleman that the motion cannot now be entertained.

Mr. McDONALD—The rule has just been passed.

The PRESIDENT—The Chair holds that that resolution does not govern the proceedings of this day.

Mr. GOULD offered the following resolution:

Resolved, That the Committee on Contingent Expenses be discharged from the further consideration of the resolution to bind the Constitution with notes, etc., and that the same be referred to the Committee on Public Printing.

Which was carried, and the subject referred to the Committee on Contingent Expenses.

Mr. BELL—I hope that the rule requiring the resolution to lie over a day in regard to the examination to be made by the Canal Committee may be suspended by unanimous consent, and that the resolution may pass. It only requires a brief examination to be made, that can be made during the recess from to-morrow at one o'clock until Monday, and if made at all it is desirable it should be made at that time. It does not involve any expense. It merely provides that the Committee on Canals shall make that examination.

The PRESIDENT—There being no objection, the resolution will now be considered.

The SECRETARY proceeded to read the resolution of Mr. Prosser, as follows:

Resolved, That the Committee on Canals have authority to attend personally until Friday and Saturday of this week, or authorize a sub-committee of their number to do so, at such place as they think proper, to take testimony and make personal examination as to the capacity of the locks upon the Erie canal to do the business, and as to the capacity of the prism for larger locks.

The question was put on the resolution, and it was declared adopted.

Mr. SEAVER—I offer four several resolutions, calling for information from different parties upon the same subject-matter.

The SECRETARY proceeded to read the resolutions, as follows:

Resolved, That the Commissioners of the Land Office be, and they are hereby requested to transmit to this Convention, a list of all the lands, with the location thereof, heretofore granted to or acquired by the "Sackett's Harbor and Saratoga railroad company," the "Lake Ontario and Hudson River railroad company," and the "Adirondack company," stating as well the number of acres of said lands donated by the State, if any, as the number of acres purchased of the State, and the price per acre for which said lands were conveyed, when so purchased, and by what titles the said lands are now held by said company or association, organized pursuant to the provisions of chapter 236, Laws of 1863, entitled "An act to encourage and facilitate the construction of a railroad along the upper Hudson into the wilderness in the northern part of this State, and the

development of the resources thereof," or of any act to which said act is supplemental, or of any act supplemental to or amendatory of said chapter 236

Resolved, That the Comptroller be, and he is hereby, requested to inform this Convention what State of New York or United States stock, if any, and in what amount, has been deposited with him, and the time when the same was so deposited as security for taxes on lands, pursuant to section 5 of chapter 236 of the Laws of 1863, entitled "An act to encourage and facilitate the construction of a Railroad along the Upper Hudson into the Wilderness in the northern part of this State, and the development of the Resources thereof."

Resolved, That the State Engineer and Surveyor be requested to communicate to this Convention a statement showing the quantity of lands sold by the "Sackett's Harbor and Saratoga railroad company," the "Lake Ontario and Hudson River railroad company," and the "Adirondack company," or by any and every other company having or claiming to have or to have had and enjoyed the franchises of the corporation or corporations aforesaid, with the location and description of said lands, if any, and the names of the grantees thereof.

Resolved, That the State Engineer and Surveyor be requested to inform this Convention what evidences, if any, have been filed in his office of the construction and operation of the railroad mentioned in the fifth section of chapter 236 of the Laws of 1863.

Which were laid over under the rule.

Mr. BICKFORD—I wish to ask leave of absence from this evening until ten o'clock Tuesday morning. I have received a letter stating that my wife and child are ill, and if the Convention will give me this leave of absence it will give me two days instead of one.

Objection being made, the question was put on granting Mr. Bickford leave of absence, and it was declared carried.

Mr. BELL—I am requested to ask leave of absence for the remainder of this week, for Mr. Merrill, of Wyoming, he having been called home by a telegram.

There being no objection, leave was granted.

The PRESIDENT presented a communication from Richard O'Gorman, counsel to the corporation of New York, in answer to a resolution of the Convention of August 3.

Which was referred to the Committee on the Judiciary.

Mr. KRUM—I ask leave of absence until to-morrow.

There being no objection, leave was granted.

Mr. SEAYER—I ask unanimous consent that the several resolutions offered by me a few moments since may be now considered.

The question was put on the resolutions of Mr. Seaver and they were declared adopted.

Mr. FOLGER—I ask leave of absence for my colleague from the twenty-sixth district, Mr. Lapham. He has received a letter making it necessary for him to leave at one o'clock and fifteen minutes, and remain away until Tuesday.

There being no objection, leave was granted.

Mr. E. P. BROOKS offered the following resolution:

Resolved, That on and after Tuesday next, this Convention will commence its daily sessions at nine o'clock A. M., subject to the rule adopted by this Convention as to adjournments on alternate Saturdays and the meetings on Mondays.

The question was put upon the resolution of Mr. E. P. Brooks, and it was declared lost.

The Convention then resolved itself into Committee of the Whole on the report of the Committee on the Legislature, its Organization, etc., Mr. ARCHER, of Wayne, in the chair.

The CHAIRMAN announced the pending question to be on section 4 of the report of the committee.

The SECRETARY proceeded to read the section as follows:

SEC. 4. The Assembly shall consist of one hundred and thirty-nine members who shall be chosen by counties, and shall be apportioned among the several counties of the State, as nearly as may be, according to the number of inhabitants thereof, who are citizens of the State, and shall hold office for one year. Each county shall be entitled to at least one member, except that the counties of Fulton and Hamilton shall, together, elect, until the population of the county of Hamilton shall, according to the ratio, entitle it to a member. No new county shall be erected unless its population shall entitle it to a member. The first apportionment of members of Assembly shall be made by the Legislature at its first session after the adoption of this Constitution, upon the enumeration of the inhabitants of this State, who are citizens thereof, made in the year one thousand eight hundred and sixty-five. A like apportionment shall be made by the Legislature at its first session after every such enumeration. Every apportionment when made shall remain unaltered until another enumeration shall be made.

Mr. MERWIN—I offer the following substitute:

SEC. 4. The Assembly shall consist of one hundred and twenty-eight members, who shall be annually elected. The members of Assembly shall be apportioned among the several counties of the State by the Legislature, as nearly as may be, according to the number of their respective inhabitants, excluding aliens, and shall be chosen by single districts. The apportionment as now established by law shall remain until another enumeration and apportionment as hereinafter provided.

The Legislature at its first session after the return of every enumeration shall re-apportion the members of Assembly among the several counties of the State, in the manner aforesaid, and the boards of supervisors in such counties as may be entitled, under such apportionment to more than one member, shall assemble at such time as may be provided by law, and divide such counties into assembly districts equal to the number of members of Assembly to which such counties shall be entitled, and shall cause to be filed in the offices of the Secretary of State, and the clerks of their respective counties, a description of such Assembly districts, specifying the number of each dis-

tract and the population thereof, according to the last preceding State enumeration, as near as can be ascertained. Each assembly district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, and shall consist of convenient and contiguous territory, but no town shall be divided in the formation of such districts. The apportionment and districts so to be made shall remain unaltered until another enumeration shall be taken under the provisions of the preceding section. Each county shall be entitled to at least one member, except that the counties of Fulton and Hamilton shall together elect until the population of the county of Hamilton shall, according to the ratio, entitle it to a member. No new county shall be erected unless its population shall entitle it to a member.

Mr. MERWIN—It will be seen that this amendment leaves the provisions of the Constitution as they now are. It provides for one hundred and twenty-eight members to be elected by single districts, the apportionment and distribution of them to remain as they are now, so that no new apportionment will need to be made by the Legislature. In my opinion, a larger number would be preferable, I think that would be more consistent with the spirit of our institutions; still many of those whose opinions I respect differ from me, and I think, perhaps, upon the whole, it is better to retain the number we now have. It may be more satisfactory to the people, and will not be inaugurating any change in that respect. It will also be seen that the system of single districts is retained. That question has been discussed in another aspect, but the same arguments in regard to that question as to senate districts will apply more forcibly here. I have stated in another place all that I care to say upon this question, and I think that it is the more correct and just plan to adopt. I think it would be more satisfactory to the people, and will retain the elements which we desire to attain in the constitution of the Assembly. There will be a responsibility about it which you cannot get if you have large districts. There are in the State twenty-nine counties that elect more than one member; there being sixty counties in the State—or really fifty-nine, inasmuch as Fulton and Hamilton elect together—and, of these, twenty-nine have more than one member, and these twenty-nine comprise at least four-fifths of the inhabitants of the State. Also, inasmuch as we have adopted the single senate districts, if we elect the Assemblymen by counties we will have the anomaly of having assembly districts larger than senate districts; which, in a number of instances, it seems to me, will work badly. I think the amendment I have suggested is right, and I hope it will prevail.

Mr. LOEW—I am opposed to the amendment of the gentleman from Jefferson [Mr. Merwin], and in favor of electing members of Assembly from counties, as reported by the majority of the committee. I do not desire at this time to enter into any lengthy argument upon this subject, but simply to give utterance to a few thoughts that have suggested themselves to my mind. I presume all will agree that our best efforts should be directed and brought to bear to secure a better

and a more honest and intelligent representation in the lower branch of the Legislature than we have heretofore had. And I know of no better means of accomplishing this most desirable result, than by going back to the old system of electing the members of Assembly by counties. I believe that a great majority of the candid and observing citizens of this State, who have given any attention to the matter, will unite in declaring that the small district system, which was established by the Constitution of 1846, is a failure. Under the first Constitution of this State, as well as under the Constitution of 1821, they were chosen by counties, and then we had men of great ability, honesty and integrity; men whose influence was felt in behalf of all that was wise, right and good in government; men of whom the State might well be proud, and whose names will long be remembered by a grateful people. But our members of Assembly have gradually become worse and worse, until now few respectable men care to hold the office. I do not mean to say that there are not some able, high-minded, and honorable men in the Assembly every year, but I do mean to say that these are the exception, and that as a rule, the great majority of the members are in almost every respect inferior to the men we had under the old system. And I think every reflecting man will bear me out in this assertion. This I attribute, in a great measure, to the fact that they are elected in small assembly districts. Under the present system it does not matter much how little a man may be qualified for the position, or how ignorant or depraved he may be, if he can gather enough of the same sort, like himself around him, he can, by political and other influences, succeed in getting a nomination, and be elected. This is so not only in cities, but I understand from a distinguished member of this body, who belongs to the party in the majority here, that it is, in a great measure, equally true of the rural districts. Now it seems to me, that if they are elected by general ticket throughout the county, these direct personal influences cannot be brought to bear so readily nor so effectually. The votes of the better class of the community will be more apt to tell, because the other class will not be able to make such combined and united efforts in behalf of their favorite candidates. Money, which is so often all-powerful in small districts, and before which obstacles, seemingly insurmountable, give way like ice before the summer's sun, will in a great measure be useless in a county canvass. Candidates will be compelled to rely more on their previous reputation, for an election; and the result will be, that we will have a much abler body of men. Men of acknowledged ability, and high standing in society, who would scorn to resort to the trickery, the low cunning, and the improper and illegal use of money which is rendered absolutely necessary in order to secure an election in a small district, would be willing to become candidates if their claims could be fairly presented for the consideration and judgment of their fellow-citizens, without any necessity on their part of going through a degrading canvass. This, I apprehend, can only be done by electing them on a general county ticket, whereby every elector is

enabled to decide unbiased upon the merits and demerits of all the candidates in his county, and cast his vote for those whom he may think best qualified. Permit me now, Mr. Chairman, to notice very briefly, the objections which I have heard urged against that mode of electing them. The first is, that they will not represent the views and sentiments of the people nearly so well, as if they were elected from small districts. There would be force in this objection, if there was a great diversity of interest between different parts of those counties who are entitled to more than one member. So far as cities are concerned, every representative in the Legislature, as a general thing, really represents the whole city, and not the particular assembly district in which he was elected, and with especial reference to which, he is very rarely, if ever, called on to act. As regards the country, I am not sufficiently acquainted with its peculiar wants and necessities to pass an intelligent judgment on the matter. But when I reflect that the State is divided into sixty counties, each of which is necessarily composed of a comparatively small portion of the territory of the State, the interests of whose inhabitants must be in a great measure identical, so far at least as representation in the councils of the State is concerned, it seems to me this objection must fall to the ground. The second objection is, that it will take away the power from the people and place it in the hands of politicians. If this were so I would be the last one to countenance it. Who, let me ask, makes the assembly nominations now? Do the people make them? Are they not in reality made by political organizations in each assembly district, through whose combined and united influence and power, either directly or indirectly, the county nominations are also made? True, sometimes independent candidates are run and supported by citizens who are tired of party rule and party nominations; but we all know how very seldom they are successful. At other times a number of influential citizens in an assembly district may succeed in procuring the nomination for a certain person from the powers that be, but, as I said before, does it not much more frequently happen that bold and bad men will procure the nominations for their favorites? No, no, Mr. Chairman, when the time shall come that the best, the most honest and most intelligent portion of the community in each assembly district shall be willing to devote the necessary time and attention to this matter, and combine to elect the best men, I shall be in favor of the small district system; but that time is not yet. The third objection is, that inasmuch as the Convention has decided in Committee of the Whole to adhere to the small district system so far as the Senate is concerned, it will not do to enlarge the present assembly districts, because if we do, the members of the lower house will represent a greater number of constituents and a larger area of territory than those in the upper house. This, it is true, will be the case in the city and county of New York—which is divided into several senate districts—but nowhere else. In most cases it requires either two or three counties to make a senate district, and there, of course, the

Senator would represent, two or three times, the population and area of territory that the Assemblymen from those counties would represent. Several of the counties form each a senatorial district, and then the Senator and Assemblymen would each represent the county. But nowhere except in New York is a senate district composed of less than one county, and consequently nowhere but there could an assembly district be larger than a senate district. If we elect Senators by the present system, and Assemblymen by counties, we will only have thirty-two senate districts, while we will have sixty assembly districts, being nearly double the number. It seems to me, therefore, that there would be no incongruity between the arrangement of senate and assembly districts. But even if there was, I think it would be of small account if we could thereby secure better men. Sir, we should aim to get the very best men, both in the Senate and Assembly, and adopt whatever means will best accomplish that purpose. The fourth and last objection that I have heard, is, that even if we elect them by counties, we will not get better men, as the central organization will, in making nominations, defer in a great measure to the wishes of the different assembly organizations, who will claim the right of naming the candidates. Assuming, for argument's sake, that this will be the case, I still insist that we will then have a much better class of men. The central organization will say to the local organization, "We will nominate any one you name, provided he is a good man, one of whom we need not be ashamed, and whom the people will support." Both parties will be compelled to do this, in order to present as strong a ticket as possible to the people for their suffrages, and if either should fail to do so, the chances are that the good men who belong to that party, those who desire the public good, more than they do party success, would give their votes, and their influence, to the opposition, and thus elect that ticket. It seems to me, therefore, Mr. Chairman, that there is absolutely nothing, in either of these objections against the county system, which is not greatly overbalanced by the many positive good results which will flow from it, and I sincerely hope that the Convention will see fit to adopt it.

Mr. A. J. PARKER—I wish to offer another amendment, which I think is now in order. I wish in the first line to change "one hundred and thirty-nine," to "one hundred and twenty-eight," so as to retain the present number of members.

Mr. MERWIN—That is my amendment.

Mr. A. J. PARKER—I know it is, but I wish to reject the rest, all except the change of number to one hundred and twenty-eight.

The CHAIRMAN—The Chair is of the opinion that the amendment of the gentleman from Albany [Mr. A. J. Parker] is in order, as it seeks to perfect the section rather than to strike out. The amendment of the gentleman proposes to strike out the number of which the Assembly shall be composed, as recommended in the report of the committee, and insert the present number, one hundred and twenty-eight.

Mr. SEYMOUR—I understand that the amend-

ment proposed by the gentleman from Albany [Mr. A. J. Parker], is an amendment to the original section, as reported by the committee, and that the only alteration that he proposes, really, is to strike out the number of members of Assembly as reported, and make it one hundred and twenty-eight, the number that has for many years constituted the House of Assembly. I am in favor of that amendment, and in favor of the report of the committee as respects —

The CHAIRMAN—The Chair has been in error in allowing the debate to progress thus far. According to the resolution adopted this morning, the whole debate would seem to be limited to five minutes. The resolution reads thus:

“Resolved, That further debate in Committee of the Whole, on the report of the Standing Committee on the Legislature, its Organization, etc., be limited to five minutes, and that at one o'clock to-day the article be reported to the Convention, and immediately considered, and continued the special order until disposed of.”

Mr. MERRITT—I hope the Chairman will construe that to mean five minutes to each speaker.

The CHAIRMAN—If there be no objection the Chair will so construe it.

Mr. ALVORD—I object

Mr. SEYMOUR—I believe I have the floor.

The CHAIRMAN—Not until it is determined whether the debate can be continued further than five minutes, under this rule.

Mr. SEYMOUR—I move then that the committee now rise and report proceedings to the Convention. It is evident that the intention was to limit each speaker to five minutes and my object in moving to rise is to move to amend the resolution so that it will conform to the intention.

The CHAIRMAN—The motion is not debatable.

The question was then put on the motion of Mr. Seymour, and declared carried.

Mr. ALVORD—I will withdraw my objection.

Mr. WEED—The gentleman from Onondaga [Mr. Alvord], has withdrawn his objection.

The CHAIRMAN—It is too late.

Whereupon the committee rose and the President resumed the Chair in Convention.

Mr. ARCHER from the Committee of the Whole reported that the committee had had under consideration the report of the Committee on the Legislature, its Organization, etc., had made some progress therein, but not having gone through therewith, had instructed their Chairman to report that fact to the Convention and ask leave to sit again.

The question was put on granting leave, and it was declared carried.

Mr. WILLIAMS—I beg leave to offer an amendment to the resolution offered by me this morning. It was my intention to give five minutes to each speaker.

The PRESIDENT—That can only be done by unanimous consent.

Mr. ALVORD—I shall have to object unless the gentleman consents to limit the time on each section, and to limit it on the whole article to one o'clock. I therefore propose that he accept a limitation of the time upon the pending section to twenty minutes, the time on the next section to

half an hour, and that the balance of the section be considered before one o'clock.

The PRESIDENT—Will the gentleman from Onondaga [Mr. Alvord] submit his proposition in writing?

Mr. CONGER—I give notice that if that proposition is submitted to the Convention at this time I shall object to its being entertained.

The PRESIDENT—The Chair holds that under the circumstances it is in the province of the Convention to instruct the committee, and the resolution will be in order.

Mr. CONGER—I understand it can only be entertained by unanimous consent and I object.

The PRESIDENT—The Chair rules, that the proposition to amend the resolution, can only be entertained by unanimous consent.

Mr. CONGER—I only want to give notice to the gentleman from Onondaga —

Mr. SHERMAN—I take the point of order, that debate is not in order

The PRESIDENT—The point of order is well taken.

Mr. BICKFORD—I move to reconsider the resolution by which the resolution offered by the gentleman from Oneida [Mr. Williams], was adopted.

Mr. CONGER—I object.

The PRESIDENT—Objection being made the resolution must lie upon the table.

Mr. WEED—I call for the question upon the amendment of the gentleman from Oneida [Mr. Williams].

The PRESIDENT—It lies on the table.

Mr. A. J. PARKER—Is it in order to move to send this again to the committee, under instructions such as are contained in that resolution substituting five minutes time to each speaker?

The PRESIDENT—The Chair will hold under the peculiar circumstances of this case, although it is not exactly parliamentary, the Convention may instruct the committee as to the order of proceedings.

Mr. A. J. PARKER—I move such instructions giving five minutes to each speaker

Mr. CONGER—I wish to say that I base my objection solely upon a further attempt to limit—

Mr. SHERMAN—I rise to a point of order. This question is not debatable, it relating to priority of business.

Mr. CONGER—I do not desire to debate the question, but only to give notice.

The PRESIDENT—The gentleman from Rockland [Mr. Conger] is out of order.

Mr. CONGER—I consent to withdraw my objection.

The PRESIDENT—The Chair must observe the parliamentary rule. If there be no new proposition for the action of the Convention, the Convention will again resolve itself into Committee of the Whole on the Report of the Committee on the Legislature, its Organization, etc.

Mr. MERRITT—I move that debate in Committee of the Whole be confined to six minutes for each speaker.

Mr. WEED—Will an amendment be in order?

The PRESIDENT—It will.

Mr. WEED—I move to amend by making it five minutes.

The PRESIDENT — That amendment is not in order.

Mr. WEED — Then I withdraw it.

Mr. ALVORD — I move it be six minutes, and that the debate be closed at one o'clock.

Mr. MERRITT — I accept that amendment.

Mr. S. TOWNSEND — I ask for a division on the question.

The question was then put upon the first part of the proposition of Mr. Merritt, limiting debate to six minutes, and was declared carried.

The question was then put upon the second clause of the motion, that the committee rise at half-past one o'clock and report to the Convention, and it was declared carried, on a division, by a vote of 63 to 22.

The Convention again resolved itself into Committee of the Whole on the report of the Committee on the Legislature, its Organization, etc., Mr. ARCHER, of Wayne, in the chair.

The CHAIRMAN announced the pending question to be on the amendment offered by Mr. A. J. Parker to the fourth section.

Mr. SEYMOUR — The amendment offered by the gentleman from Albany [Mr. A. J. Parker], is simply to limit the number of members in the Assembly to the present number, one hundred and twenty-eight, and it is an amendment, as I understand it, to the original proposition of the committee, to wit, that the members of the Assembly shall be elected by counties, and not by districts, as was the practice up to the Constitution of 1846. I am in favor of this proposition; I am in favor of the election of members of the Assembly by counties, and not by districts, and I am in favor of limiting the number of members of Assembly to one hundred and twenty-eight. There are many considerations in favor of electing members of Assembly by counties. It gives opportunity for a better selection; you have the population of the entire county to select from; whereas by the small district system you must confine your selection to the district from which the member is to be elected. When we reflect that our counties are organizations of long continuance, that the public business is regulated in reference to counties to a very great extent, that it is customary for the people of counties to meet as a people, as residents of the county, and to act together in relation to their public affairs and matters of importance to them, we must, I think, see that the representation of this population having one concentrated interest together, is better than a representation divided and scattered over a county, among little localities. My time will not allow me to pursue all these considerations, but I commend them to the reflection of every member of this Convention before he votes. The only objection I have heard in reference to this proposition of electing our members by counties is this, that we have already fixed upon senate districts which, in some instances, will divide counties, and therefore if you elect members, for instance in the city of Brooklyn and in the city of New York, by counties, you will elect them from larger districts than you do your Senators. I do not conceive that is any objection. If there is a positive good, as I believe there is, in electing our

members of Assembly from counties, it is greatly desirable that we should attain it; the fact that we elect Senators from small districts in two particular parts of this State seems to me should not weigh against the general proposition as applicable to the whole State. But you have another consideration in reference to the Senate, as the amendment now before this body now stands on this subject; I understand that a longer period of service is to be given; they are to be elected for four years; so you will have for your Senators, although elected from smaller districts, the benefit of longer experience. I think, sir, that it is an important thing to attain this organization and to sustain it, of the election of our members of Assembly by counties, and it will do much, I think, to raise the character of the body to which these members are to be returned; it gives us a better opportunity of selection; it concentrates the power of the county as a county, and the weight and influence of each county in the State then can be felt as it should be for the benefit of that county, and not be frittered away as it now is under the small district system.

Mr. WEED — I think that the number of the more numerous House of the Legislature of the State of New York is substantially large enough at the present day. If there were no other considerations except a desire to change, I should be opposed to increasing that number, but from the peculiar size of quite a number of counties in this State, when you divide the number of inhabitants in the State by the one hundred and twenty-eight, the present number in the Assembly, several counties with a very large fraction over the requisite population for one, are entitled to but one member, though they are very nearly entitled to two. I believe that a just representation of those counties in the Assembly will induce every member who will sit down and calculates those fractions, to vote to increase the number, as reported by this committee. I am forced to come to that conclusion from the examination I have given this subject, and for that reason, Mr. Chairman, I shall oppose the amendment offered by the gentleman from Albany [Mr. A. J. Parker]. In my own county we, for a large number of years, have had more inhabitants than entitle that county to two members, but because of living upon the borders, quite a number of those inhabitants are aliens, and we are reduced just below the requisite number for two, only a few hundreds less, I think, at the apportionment before the last, and hence we were reduced to but one. Under this apportionment, making it just and equal to the balance of the State, my county will have two members of Assembly, as it is entitled to by its numbers. I understand it was the desire of the committee, in making the number one hundred and thirty-nine, to accommodate, as far as possible, those counties, having a large fraction over the number of the present apportionment, to give to those who had more than one-half enough for another member an additional member by reducing the quota, by dividing the whole number by one hundred and thirty-nine, instead of one hundred and twenty-eight. For that reason, and believing that increa-

sing the number from one hundred and twenty-eight to one hundred and thirty-nine will not destroy the efficiency of the Assembly, I am in favor of the increase, and, as I said, against the amendment of the gentleman from Albany [Mr. A. J. Parker].

Mr. BERGEN—I think, Mr. Chairman, that the gentleman from Rensselaer [Mr. Seymour] was in error when he stated that in small districts the people would be necessarily confined to taking candidates from their districts. I know of no law, and doubt if the gentleman can point to any, that prevents the election or nomination of individuals residing outside of their district as members of Assembly. They would have the same privilege they now have of selecting from any part of the county or any part of the State any elector of the State. There is nothing gained by that at all. I am not in favor of the large district system. If the gentleman's argument has any weight, why not elect our members of Congress from the whole State? If his arguments have any force, why not take our members of the Senate from the whole State, so as to have the wide field the gentleman desires to select from? We have the right to do it now.

Mr. SEYMOUR—Will the gentleman from Kings [Mr. Bergen] permit me to ask him a question? I wish to ask him if the right of selection is, as he says, so extensive, whether he has ever known it to be exercised?

Mr. BERGEN—I have. There have been cases where it has been exercised. There are members here now elected to this Constitutional Convention who do not reside in the district from which they were elected; there are two from the county of Kings at this time. The right has been exercised on various occasions. I hold that the small district system is the democratic system. A pure democracy is where the people assemble together, and each man votes on every question; and the nearer we can approach to this, the nearer we approach pure democracy, which I hold to be the best democracy. In a large population you cannot have all directly participate in the government, but the nearer you get to that point the better. We have a representative, under our present system, from each locality—from each district; we bring him in contact with the party he represents; he knows their views and represents the views of that district.

Mr. SCHUMAKER—Did I understand the gentleman to say that there were two delegates elected from Kings county who do not reside there?

Mr. BERGEN—I say there are two members here now representing districts in Kings county who do not reside in those districts.

Mr. SCHUMAKER—Who are they?

Mr. BERGEN—Mr. Barnard and Mr. Lowrey; they reside in the district where I reside.

Mr. SCHUMAKER—This is news to me.

Mr. BERGEN—I understand so. But I say the nearer we can bring these men to the people they represent the better. The small districts bring them in contact with the people they immediately represent, and by that means minorities have representation here, and by that means we arrive

nearer at the sense of the people than by any other plan we can frame. This committee has already decided that small districts are most advisable in the election of Senators. The same arguments which apply in that case apply with equal and with stronger force to members of Assembly. I hope, therefore, that the single district system for members of Assembly, which is now in force, will be continued. As to the number of members to be selected for the Assembly, there may be a difference of opinion; and upon that point I have not exactly arrived at a conclusion whether it should be increased or not, but I hope by all means, the small district system will be continued as being most democratic and most likely to represent the views of the people of this State.

Mr. LEE—The committee having decided to adopt the single senate district system, to carry out the idea will, I have no doubt, after due deliberation, decide to adopt the single assembly district system, and thus preserve the system in all its symmetry. While I should not object to a moderate increase of the members of the Assembly, I think it better to favor the amendment of the gentleman from Albany [Mr. A. J. Parker], so far as it relates to the number, one hundred and twenty-eight. So far as it relates to the district, I should favor the amendment of the gentleman from Jefferson [Mr. Merwin]. It will be conceded, I think, by every member of the committee, that in the Assembly, the most popular branch of the legislative body, it is proper to come down to the body of the people and select from the several localities in the State men who will truly and correctly, and from their intimate relations with their constituents, more ably represent them than it can be done by the selection of men on a general ticket. It is claimed that to nominate and elect by counties we secure abler men in the Legislature than by single districts. Now, to assume this is to assume that the whole is greater than all its parts; for certainly by the single district system we embrace the whole in the aggregate. I suppose in that respect no argument worth anything can be drawn in favor of the one or the other on the score of getting abler men. If the people in a special locality choose to elect incompetent men, their interests must suffer, and theirs alone; so there will be none to complain if that result should happen. They can remedy that difficulty. Perhaps, were I a citizen of Troy, or of Albany, or of Hudson, or of Schenectady, business centers of the counties in which they are, where there is an identity of interest, a community of feeling, I might, like gentlemen representing some of those localities, at least be in favor of electing members of Assembly by county ticket. But, sir, I represent in part a county differently circumstanced. The county of Oswego has sent, and will continue to send if the number of 128 remains, three members to the Assembly. Each of these several assembly districts, while they have certain interests in common, yet have a local interest to protect and foster; for example, one district embracing the city of Oswego, while it has interests in common with the other districts, has a commercial interest by lake and by canal, which is the leading interest; another district lying on the borders of Oneida Lake and the Oneida Lake

Improvement, while it shares in common certain interests with the city of Oswego, has interests peculiar to its own locality, and the people in that district would desire to send to the Assembly a man who was perfectly familiar with and knew the wishes of his constituents and would honestly represent them. So, too, we have another district which has certain interests in common with the other two, but still its leading interest is in railroad transportation—lying on either side of the Rome and Watertown railroad. Its business interests are transacted over that road and through that channel, consequently when the interests of that people in regard to transportation are to be considered, they desire to be heard, and they desire to be heard through one who understands their interests, and who keeps on guard to see those interests may not be invaded. So that from these several considerations, and many others that might be furnished, I think it is clear—

Here the gavel fell, the gentleman's time having expired.

MR. M. I. TOWNSEND — I am opposed to the proposition of the gentleman from Albany [Mr. A. J. Parker], and my opposition to it arises from the fact that I am in favor of the representation of the people. I utterly repudiate this old federal doctrine, which I had hoped had died out of this country, that devices must be formed to prevent the representation of the people. The doctrine of a republican government is that, each man who is an elector is to participate in the administration of the government, and if he cannot go himself, and participate in legislation, he sends a representative and it has been the policy since this government was established to come as near to the sending of the man himself to the assembly as it was possible to come, and I believe myself that this policy has worked well. I do not believe in the doctrine that since the adoption of the Constitution of 1846 inferior men have been sent to the Assembly of the State. I do not believe there is a district in this State entitled to a representative in the Assembly that has not an abundance of men fully capable of coming here and sitting as representatives of the district. I, sir, utterly repudiate this doctrine of great men; I know very little about great men; men are only relatively great, and men that are great in one subject may be very small in another. I believe that the common-sense men upon this floor are as great as the greatest in matters of judgment; and the more I see of legislation, and the more I see of action in public assemblies, the more am I confirmed in the impression with which I came here, that the average common sense of men is the best guide even in matters of legislation. I entirely differ from my colleague [Mr. Seymour] in regard to the doctrine he has laid down that counties generally have but one interest. Sir, the assembly districts of the county in which I live have by no means a unity of interest. Since 1846 it has always been the case that the south assembly district—the district lying immediately across the river—has had an interest of its own, an interest which it has desired to have represented in

the Assembly, and it has always had it represented in the Assembly, and that is what has been called the manor interest—the interest in connection with the title under which they held their land. We have none of that interest in the Troy district, and they have very little of it in the upper district. The city of Troy, which has been a separate assembly district, has had interests of its own every year, in which the rest of the county has had no interest whatever, and the true way of representing the county of Rensselaer has been to allow the lower district to elect its own men according to its own notions to represent it in the peculiar interests that affect the whole people of that district. The city of Troy, has sent its men representing the whole interests of the city of Troy; and so it will be throughout the State. I think if you look at the counties in this State that have more than one representative you will find there are several local interests they represent; but whether that be so or not, I believe the true principle of representative government is to-day what it was at the establishment of the government, that we should come as near to sending the man himself to sit in the Assembly at it is possible to come, that we should come as near to actual personal representation as it is practicable to bring, the organization of government.

MR. DUGANNE — I am opposed to the county or large and compound representation in the Assembly, because I believe it reverses the principle of immediate representation which ought to be at the base of the popular House. I can see, sir, that instead of representing, as it should, the single community and the small circle, it may represent a consolidation of interests which are entirely opposite to the interests of the people. I can see that in some instances a county representative may be nominated and controlled by a county clique of politicians; I can suppose that in districts lying upon the Central railroad, that great interest might control one county after another, and send its agents or friends in a consolidated force to the popular branch of the Legislature; I believe that even the principle of municipal representation, as such, might obtain, in this respect, when, as in the county of New York, the city of New York could send the entire delegation, and control that delegation for municipal interests against the interests of the people, and thus misrepresent a large minority, at least, of the voters in that city. For these reasons I am opposed to the county representation, and, moreover, I deny the fact that we can get better men by such mode of representation. I look around me, in this chamber, and can recognize some of the gentlemen who have argued that better men may be obtained by a county representation, and yet those gentlemen themselves have heretofore illustrated, by their presence in the Legislature, a system of election from single districts. I can see the honorable gentleman from Onondaga [Mr. Alvord], the gentleman from New York [Mr. Opydke], the gentleman from Oneida [Mr. Sherman], the gentleman who now occupies the chair [Mr. Archer], the chairman of the committee which presented this report [Mr. Merritt], and many other men whom no one will contend are

not peers of any politician in the State in respect to statesmanlike ability; and I contend that the people know their representatives, know their neighbors, know their friends, and can select from their immediate circles better men than could ever be selected for them through cliques or combinations of politicians operating in county conventions.

Mr. SPENCER—I am in favor of some increase in the number of representatives, and for this reason. The number one hundred and twenty-eight was adopted over forty-five years ago, nearly half a century, when the population of the State was less than one-third what it is now, and when a single representative represented only eight or ten thousand of the population, while with the present population of the State, and the proposed number of one hundred and twenty-eight each, he will represent about twenty-five thousand. It seems to me, sir, that we should accommodate the number in some degree at least to the increased population of the State. I am in favor also, of an election by counties, and for this reason, that the county and the town and the city are the only political divisions and the only political communities which are known in the State, and there is no other reasonable mode of apportioning the representatives of the people except by the political communities or the political divisions into which the State is divided.

Mr. DALY—I supposed when I came to this Convention that the people expected certain changes from the Constitution of 1846. I supposed that there was such a thing as legislative corruption but from the character of the arguments here I am led to believe that I must have been mistaken, and that the Legislature during the last ten or twelve years compares in every respect with any previous Legislature in the State. I believe the people think differently, whatever gentlemen may think or say here—that they expect changes; but the only result so far has been that, with one exception, we have been re-enacting the Constitution of 1846. We have decided to have the same number of Senators, and it is now proposed that we should have the same number of Assemblymen. I may be mistaken, Mr. Chairman, but I anticipate that the people expect something more. The gentleman from Kings [Mr. Bergen] says it is desirable to bring things down to a pure democracy. He knows something about the kind of pure democracy that prevails. I knew something of it in former days, and something of it now. It is the assembling together of a certain number of men, who arrange what the people shall do, and when the people go to the polls they take in hand a bundle of tickets merely to record the will of these gentlemen. It is a mere matter of nomination, and the only difference in regard to it is whether you have a county nomination or a district nomination. It is simply a question of whether you will be controlled by larger politicians or smaller, for the process is the same in each instance. In my judgment the people know this, the people expect some change from this Convention, and, so far as I can see, there is no indication of a desire to make any change. If anything is to be expected it is by a change

in the legislative organization, or by something else which has not been suggested. We have had the reports of two committees, both committees, in point of numbers and character, in every way commanding the confidence of this Convention and of the people of the State, and we attach no importance whatever to their labors. They spent nearly two months in the consideration and formation of this report, and we are spending four or five days in tearing it to pieces. I say, Mr. Chairman, this may be all right, I may be entirely wrong, no remedy may be required, there may be no corruption in the Legislature, we may have nothing to accomplish, and if that is the case I ask what occasion there was for a Constitutional Convention?

Mr. M. H. LAWRENCE—The gentleman [Mr. Daly] says that the people of the State demand a change in respect to the character of our Legislature and its organization. I merely wish to state that I represent here an assembly district—one of the rural districts of this State, and I do claim to be somewhat conversant with the popular feeling of my district; and, sir, I never heard one sentiment uttered by way of dissatisfaction with the Constitution of 1846, in respect to the organization of the Legislature. And certainly one of the wisest things the Convention of 1846 did was in the organization of single senate districts and the organization of the assembly districts in the manner in which they did organize them. We have gentlemen here on this floor arguing in favor of large districts for county representation. Sir, I am only convinced of this one truth—that the gentlemen distrust the people of this State and their ability to govern themselves. What I shall do in this Convention will be to try to vote here as my constituents would vote if they were able to deposit their ballots. I claim that that is the true representative government. Gentlemen talk about a certain class of philosophers having expounded what was the government in its foundation, and they told us that its foundation was in the will of God. Perhaps that view is correct. The gentleman from Oneida [Mr. T. W. Dwight] told us that we should form the best Constitution we could, and advise the people what to do. Sir, we are the servants of the people, having come here to do their bidding and to obey their wishes, if we know what their wishes are. I believe the voice of the people is the voice of God. That is my idea of a republican government. I believe that we should try to find out what the wishes of our constituents are, and then try to conform to them, I hope, sir, that the present organization of the Legislature, as adopted by the Convention of 1846, will be adhered to.

Mr. RATHBUN—I have been interested in the course of this debate, and more especially with the argument of certain gentlemen, and I regret that there was not more of them who are so entirely devoted to the interests of the people, and who are under so great apprehension that the people are to be ruined. Gentlemen have made it a point to express with great vehemence their especial regret and their extreme apprehension that the people are going to be ruined in some way by enlarging the field of representation. They have urged this point, that the people ought not to

be allowed to come together to elect a representative from the county because it removes the representative so far from the people, and is a distrust of the people. My friend from Yates [Mr. M. H. Lawrence], who has just taken his seat, who represents a county that has but a single district, has given his warning to the members of the Convention who represent large counties that they are about to abandon the people. Now, what is the difference whether the people of the county, as a county, vote for the representative of the county to be elected annually, or whether they divide up the vote for the representative to be elected annually. The nearness of the thing to the people, as I understand it, is the frequency of election. That is what brings it home to the people, not the large district nor the small district. That has nothing to do with the case at all. But how often do the people elect? That is the nearness to the people. Now, sir, the proposition is to elect members of the Legislature annually. Does the gentleman have any apprehension that the people of the county cannot secure men to represent the county by county lines as well and as effectually, and men as well known and as competent as when they are elected by a part of the county. We were told yesterday it would not do to have large senate districts, because the people could not know anybody outside of county lines. Nobody then dared to insinuate that the people could not know anybody inside of county lines. If we are to take the argument to-day, it is that the people are not sufficiently intelligent to be able to choose anybody outside of the assembly district of the county. We have got one absurdity, that seems to be fixed to go into the Constitution as adopted by the Convention, and that is, the election of Senators by single districts, in order to keep them near the people; they are to be elected from single districts, and then give them a run of four years. Is that what the gentleman calls keeping the thing near the people? You elect a man and he runs for a period of four years, good or bad, and we have nobody to be elected in the mean time to admonish him or to advise with him; but the idea that the man is near the people because he is elected from the small district and for a long time is perfectly absurd.

Mr. ROBERTSON—As my time is short, I will not attempt to contrast the reasons which urge me to support the election of representatives in the Assembly from a county by general ticket, with those which induced me to vote against large districts and numerous Senators in selecting representatives for the Senate. I shall merely content myself with giving a few reasons or perhaps reduce them all to one, why, I am anxious the whole county should be represented by a body of men chosen in one body rather than by gentlemen selected from different districts into which the county is to be subdivided. The division of this State into counties is a time honored division, both in the name, and in the parts into which the State has continued from its creation to be divided. It existed before the revolution, and such division and name came across the ocean from that country from which we derived

most of the great principles of civil rights and liberty to which we now adhere, which were brought over to this country by our fathers. Such divisions remain to-day in almost all the old settled parts of the State the same as they existed in our colonial state, which have ever since been recognized politically and civilly in every possible way. The gentlemen of this Convention desire to regulate cities and other municipal corporations by general laws which, of course, will necessarily take away the necessity of representing minute local interests by dividing the State into small districts.

Mr. SCHUMAKER—Which country does the gentleman refer to?

Mr. ROBERTSON—I will answer that outside after my six minutes are over. This division into counties, with county officers and government, as continued down to the present time, has been found convenient, and has been respected by every Constitution of the State, and the representation of counties in this State has always been kept up to the present time. So sacred have counties been held, that I find, even in regard to the divisions of the State for the purpose of electing Senators by districts which are required to be artificially made by the Legislature, and which, although provided for in the Constitution of the State, may be changed, that county lines are required to be so respected, that, even in this artificial division, the people of the State have always maintained, with religious respect, the integrity of the body commonly known as counties having separate political organizations for local purposes, so as to have them represented in the Legislature of the State, although not represented in the Senate. We are to be divided, the whole people of the State are to be numerically divided, into separate districts, for the purpose of electing Senators, and constituting a popular representation. I therefore submit, we ought to maintain this political division into counties, with their train of sheriffs, district attorneys, and other officers, and a separate organization, to be represented as a body, by a body of men elected from the county at large, and the county should not be cut up into separate artificial districts for the purpose of having members elected to represent them. I have heard much on this subject in regard to the advantages of small and large districts, in regard to preventing political corruption. It is a most extraordinary thing, and I would be glad if gentlemen would in some way solve the enigma, how it happens that notwithstanding these constant declamations against political corruption in legislation, and personal corruption in legislators, which has ever formed the staple commodity of all the journals in the land, who have nothing else to say—how it has happened that the same people whom we are now so anxious to protect, should have sent again and again, by their votes, persons said to be known as political and corrupt legislators to the Legislature of the State; and yet the same people have sent here gentlemen so wise, so prudent, and having so much foresight, that they can provide a bulwark, and a breakwater against the corruption of these very representatives of

the same people, who are to legislate in another capacity, and meet in this same chamber hereafter. I would like to have this riddle solved, and when it is solved I may be prepared then to subscribe to all these *succedanea* which are proposed here for the purpose of preventing political corruption and preventing the people from sending to the Legislature men who will forfeit their trust.

Mr. VAN CAMPEN—I ought to apologize to the Convention for rising to make another speech, but what I wish to say is this: this charge of corruption, if such a thing exists, is not to be corrected by a change of districts. When the Committee on the Powers and Duties of the Legislature report, I will have a proposition to cure the difficulty, but not in the organization of the districts. I sympathize with the gentlemen from the city of New York who object to having the county of New York elect the whole delegation, and if they will put me in possession of the answer I can make to my constituents to the question I propound now, I will go with them. You have said that 25,000 of the people in my county are entitled to a representative on this floor, and we are entitled to two. Now, if you enable me to answer them when I go home, how it is that you compel them to take counsel from the people who live in other parts of the county as to the man they shall send—if you furnish me with a conclusive answer on that point, so that I will be able to say it was not for the reason you are not competent yourselves, but must consult with the people in the other part of the county with regard to the selection of these men, I may go with you. If you do not give me that answer I must go against your proposition.

Mr. STRATTON—I do not rise to give an answer to the gentleman from Cattaraugus [Mr. Van Campen]. If I had consulted my own feelings, laboring as I am under a very severe cold, I should say nothing. But I feel it a duty to say a few words, more especially in answer to what has just been said by two of my colleagues [Mr. Daly and Mr. Robertson]. The whole argument addressed to us here why we should elect delegations to the House of Assembly by counties instead of single districts, seems to simmer itself down to this: that we will get men, by that system, of a larger-minded class—men who would be less likely to be corrupted when they come here, because, coming from large districts, they would necessarily be correspondingly greater in every respect than members chosen from smaller districts. I believe that both are wrong; and if I had time, I think I could show by an argument why they are both wrong. But I will not argue the question further than by a *home*, and perhaps it may be called before I get through a *homely*, illustration. We have in the city of New York a legislature, composed of two branches, after the similitude of our State Legislature. We have a board of aldermen, elected by small districts, holding their office for two years; we have a board of councilmen, elected from larger districts; and the councilmanic district in which I reside is larger by far than the counties of Rensselaer and Washington together. Those in the board of councilmen are elected from these large districts; we must there-

fore look to that body as being more pure, less likely to be corrupted, more honest in their legislative character and dealings, larger minded and more intelligent, than those aldermen who are elected from small districts; and yet I am proud to say that those aldermen, coming from those little districts as they do, have never been any more corrupt; that they have been as honest in their legislative character and dealings; that they have in all things been as careful of the public weal; that they have been as watchful over the interests of the city they represent; that they have in all things conformed themselves to the true principles which should actuate and govern legislators of the great city of New York, just as much as those who have come from the large districts in the board of councilmen. Is not this saying enough? Those aldermen, from those small districts, have always been as much on the alert to expose and scathingly rebuke bribery and corruption; they have been as careful to scorn a bribe [laughter]; they have been in all things as careful as those delegates who are so carefully selected from those very large districts. I see no difference, and you will see no difference in the character of this house, whether your members come here by and through chicanery and mixing up of party cliques in a county convention, or whether they come here direct from the people, by the smaller districts. It is not the *manner* in which they are sent. It is the *men* themselves, and when those men can be taught their duty, either in the Legislature by their peers, or by the courts, or at home by their constituents, we shall have an honest Legislature, and not until then.

Mr. BICKFORD—I rise for the purpose of calling for a division of the motion proposed by the gentleman from Albany [Mr. A. J. Parker]. He proposes to strike out, and then insert. I will call for the question to be first taken on the motion to strike out.

The CHAIRMAN—The gentleman is informed that the motion to strike out is one and indivisible.

Mr. PRINDLE—I desire to say a single word in regard to the increase of representatives to one hundred and thirty-nine, as proposed by the committee. I am in favor of that, and I am in favor of it for the reason stated by the gentleman from Cortland [Mr. Ballard], because I believe that number is better calculated to a fair apportionment of the districts, and allows large factions in this State which are now unrepresented to be represented. The gentleman from Cortland [Mr. Ballard] stated the effect of this would be to give another member to the county in which he resides. I would state, Mr. Chairman, that the same result would be had in the county of Chenango. Before the last apportionment the county of Chenango had for a great many years two members of Assembly, but by the last census the population fell a trifle short of the requisite number for two members. Now sir, we have always given and we give now, in the county of Chenango, more votes at every election than the adjoining county which has two representatives. I suppose they have in that county more women and children and less voters. The number one hundred and thirty-

nine would give Chenango an additional representative, and I think it is a better number than one hundred and twenty-eight. But sir, I believe that an increase in the number of representatives is due to the increase of the population of this State. The increase in the number ought to be large. If one hundred and twenty-eight in 1846 and previous to it, was not too large a number to represent the population of this State, then I think one hundred and thirty-nine at this time is not too large a number to represent the present population.

Mr. BICKFORD—I would respectfully ask the Chair to mention the rule to which he refers, that the motion to strike out and insert is one and indivisible. Rule 38 says, when a blank is to be filled and different sums or time shall be proposed, the question shall be first taken on the highest sum and the lowest time.

The CHAIRMAN—The Chair answers the gentleman from Jefferson [Mr. Bickford], that he does not recollect the specific rule, except it is an old parliamentary usage, from the knowledge of which the Chair decided the question on the impulse of the moment, and he is now informed that it is in the rules adopted by this body.

Mr. AXTELL—I call for the reading of the resolution.

The SECRETARY again read the resolution.

Mr. MERRITT—I wish to say that the conclusion which the committee arrived at, is based upon the fact that this increase was occasioned by representing majority fractions. A portion of the committee, of which I was one, were in favor of largely increasing the Assembly, and the number fixed upon was in the nature of a compromise. We based it upon the same principle, and that was that the majority fraction should be fairly and properly represented. We also included a class who heretofore have been excluded—colored persons not taxed—and in making the distribution on that basis it gave the apportionment as I stated it the other day, and it made an increase of eleven members. I shall vote, therefore, against this proposition, believing an increase ought to be made, and I would be willing to extend that increase to one hundred and seventy-five or two hundred. I would be very willing to support the proposition the gentleman from Jefferson [Mr. Merwin] has made in his minority report, but I understand he does not propose to renew that proposition. There is no feeling on that subject, and in case the proposition is now adopted, of course we adhere to the one hundred and twenty-eight.

Mr. BARKER—I desire simply to give information in regard to how the eleven additional members, if voted for, will be distributed among the State. Allegany will have one; Chenango one; Clinton one; New York two; Orange one; Kings one; Westchester one; Steuben one; Monroe one.

The question was then put on the motion of Mr. A. J. Parker, and it was declared lost, on a division, by a vote of 40 to 67.

Mr. CONGER—I offer the following amendment:

"But nothing herein contained shall prevent any elector in any county from giving his vote

for any citizen, whether residing in the same county with such electors or not, and any citizen receiving 5,500 votes shall be entitled to a seat in the House of Assembly."

It is no new law that a person in a county may vote for any person outside of the county; but no method has yet been devised by which a person exercising that right shall have his vote counted, except under the old majority or minority plan. Now, sir, I propose to try, by this amendment, to give the minorities a right throughout the State to be represented on the basis of 5,500 votes, which is almost equal to the apportionment now determined by this committee for about one hundred and thirty-nine members; so that if a minority in any one district of the State or any one county—I do not propose to set aside the rule at all—are dissatisfied with the nomination made, they will have a right to make a new nomination of their own, and to vote for a candidate of their own choice, and thus have the power to give him a seat if they succeed in giving him 5,500 votes. I suppose that is the only practical way in which representation of minorities can at this time be tried in this State. That is all I have to say.

The question was then put on Mr. Conger's amendment, and it was declared lost.

Mr. BICKFORD—I propose to amend section four by striking out "one hundred and thirty-nine" in the first and second line, and insert "one hundred and forty-five."

The question was put on Mr. Bickford's amendment, and it was declared lost.

Mr. DALY—I propose to amend the section by inserting this amendment at the end of it:

"The provision herein, however, shall not prevent the Legislature from providing hereafter for a more effectual representation of minorities."

I offer this amendment, Mr. Chairman, because it has been suggested by the gentlemen composing the society whose memorial and report I presented yesterday. I will not undertake now to submit any argument upon the subject. I agree with my colleague from New York [Mr. Opdyke] that the time is not proper for the introduction of this subject into the fundamental law. To the extent I have examined the subject, however, I am not prepared to go as far as he does in the conclusion that the whole matter is fallacious and impracticable. The impression made upon my mind so far as I have had an opportunity to examine the subject, is, that there is something in it, and I offer this amendment with a view of leaving it to the power of the Legislature hereafter to adopt any provisions in respect to it which experience may justify. I admit, for the present, it is entirely experimental, as it has not been subjected to the test of practical experience; but the fact that it has been very earnestly considered by very able minds, not only by Mr. Hare, its projector, in England, but by the most eminent political economist of this age, Mr. Mill, and has been largely discussed in other countries where personal representation exists, leads me to think it would not be right in us to cut off the Legislature for twenty years from even considering this subject, if the views of those gentlemen who have advocated it, should prove to be correct. I agree

with the gentleman from New York [Mr. Opdyke], that the fundamental principle of this government is, that it must be ruled by majorities, because there is no other alternative; but there is also a principle, in connection with this which, is that minorities must be heard. I have very great respect for the opinion of the intelligent gentlemen who compose the society referred to, and at whose suggestion this amendment is offered; their motive being the suppression of the causes which now lead to political corruption in the Legislature and in the exercise of the elective franchise, and it is only in that view I submit this amendment; leaving the Convention to make such disposition of it as, in their judgment, they may think proper.

Mr. AXTELL—I hope the amendment just offered will not prevail. I must say, with all due deference to gentlemen on this floor, that I think we have had the representation of particular minorities, *ad nauseam*, and I hope nothing will be placed in the Constitution recognizing the visionary theories of political doctrinaires.

Mr. PAIGE—Political writers present the proposition and insist upon its correctness, that there can be no pure democracy in representative governments, unless minorities are represented. I agree with the gentleman from New York [Mr. Opdyke] that we are not prepared in this Convention, with the knowledge we have on this subject, to prepare and incorporate in the Constitution a plan for the application of this doctrine. But, sir, I think so much of the principle of representing minorities, that I am willing to agree that this subject shall be committed to the Legislature. The true principle of representative government is the personal representation of all the electors. In districts where one party greatly preponderates over the other, the minority for the time being are substantially disfranchised, but if we can introduce a principle whereby the minority may be represented, they will have a personal representation in the deliberative body, and so meet face to face the representatives of the majority, and can advocate the views of the minority. This principle is of so much importance, and it is so essential to the perfection of representative government, that I am willing to commit the subject to the Legislature for the reason that we have not now sufficient knowledge of the subject to devise a plan to be inserted in the Constitution.

Mr. VAN CAMPEN—I offer the following amendment to the proposition of the gentleman from New York [Mr. Daly]:

"If approved by, or after submission to the people."

Mr. DALY—I accept the amendment.

Mr. E. A. BROWN—I rise merely to suggest that, under the Constitution, provision will undoubtedly be made for amending that instrument, and when the electors have acquired the knowledge essential to the framing of an article, by which minorities can be represented in the Legislature, such a provision can be secured by an amendment to the Constitution without specially providing for it now.

The question was then put on the amendment of Mr. Daly, as amended by Mr. Van Campen, and it was declared lost.

Mr. KINNEY—I offer the following amendment:

Strike out of fourth section, commencing in the sixth line, the following words: "except that the counties of Fulton and Hamilton, shall, together, elect, until the population of the county of Hamilton shall, according to the ratio, entitle it to a member."

The object I have in offering this amendment is to carry out the principle which the committee have recognized, and which this Convention has also recognized by a vote just taken, namely, that every county shall have one representative. Now, sir, I see no good reason why the county of Hamilton, although a small county, should not be represented in the Legislature. That principle seems to have been recognized by the committee in their deliberations, and in the report they have made; and is also recognized by the Convention. I trust the Convention will not go back and repudiate now, the very principle laid down in the section which we propose to amend. The county is organized, and stands now on a perfect equality with all other counties in the State. If a county is to be represented by virtue of being a county, then the county of Hamilton should be represented also. I hope the amendment will be passed by this committee for the purpose of being consistent at least with itself, and have every county represented in the Legislature.

The question was then put on the amendment of Mr. Kinney, and it was declared lost.

Mr. E. A. BROWN—I offer the following amendment:

In Mr. Merwin's amendment strike out the first part and insert as follows, viz.: "The Assembly shall consist of one hundred and forty-two members, who shall be annually elected."

The only change from Mr. Merwin's proposed amendment is in the number, and I think, from what has been said, there are very substantial reasons why a small increase of the members of Assembly should be made. I do not propose to make any argument about it.

Mr. HAND—I do not know what reason the gentleman from Lewis [Mr. E. A. Brown] has for this, specially, but I will mention one reason why this addition should be made; that is, to do justice to three counties that have a fraction almost large enough to give them another member. One is the county of Broome, another the county of Onondaga, and the county of Jefferson, having a very large fraction—almost twelve thousand. By adding these three you would do justice to those counties, and certainly would not make a large representation for a State containing four millions of population. I would be in favor, personally, of making this representation much larger, but I hope the Convention will be in favor of making this addition of three to the number, and make it one hundred and forty-two.

Mr. KETCHAM—I am in favor of the increased number of representatives, because I believe that the increased population of the State requires it; but I am opposed to making it an even number.

Mr. HAND—I move an amendment, to make it one hundred and forty-three.

Mr. E. A. BROWN—I am willing to accept

the amendment, and call it one hundred and forty-three.

Mr. KETCHAM—I remember one or two occasions, when the Legislature have been here for weeks, detained by reason of an inability to organize the House, because they were equally divided. I think it is rather important, therefore, that we make the proposed odd number in the amendment. I shall vote for any increased number not exceeding two hundred, if the proposition makes the body consist of an odd number of members.

The question was put on the amendment of **Mr. E. A. Brown**, and it was declared lost.

Mr. E. A. BROWN—I propose one hundred and forty-one.

The question was put on the amendment of **Mr. E. A. Brown**, and it was declared lost.

Mr. MERRITT—I move to make it one hundred and thirty-nine, as proposed by the Committee, instead of one hundred and twenty-eight.

Mr. VAN CAMPEN—I rise to a point of order that we have taken a direct vote on that number within thirty minutes past.

The **CHAIRMAN**—The Chair understands the proposition of the gentleman from Jefferson [**Mr. Merwin**] was to make it over one hundred and twenty-eight. While that was pending the gentleman from Albany [**Mr. A. J. Parker**] moved an amendment to the original article as reported by the committee, so as to change it from one hundred and thirty-nine to one hundred and twenty-eight; that was lost. But that vote did not have any connection with the amendment of the gentleman from Jefferson [**Mr. Merwin**]. The Chair, therefore, holds the proposition of the gentleman from Jefferson [**Mr. Merwin**] now stands at one hundred and twenty-eight, and the gentleman from St. Lawrence [**Mr. Merritt**] moves to amend, by changing the number in that proposed amendment of the gentleman from Jefferson [**Mr. Merwin**] from one hundred and twenty-eight to one hundred and thirty-nine.

The question was then put on the amendment of **Mr. Merritt**, and it was declared carried.

The **CHAIRMAN** announced that the question was on the proposed substitute of **Mr. Merwin**, as amended by the committee.

Mr. BARKER—I rise simply to state that having changed the number to one hundred and thirty-nine, the balance of the proposition of the gentleman from Jefferson [**Mr. Merwin**] should be voted down, because it proposes to continue the present apportionment. If it is one hundred and thirty-nine there will have to be a new apportionment, and therefore I think the proposition ought to be voted down as being only calculated for one hundred and twenty-eight.

Mr. MERWIN—The main proposition now left of my amendment is whether or not we shall elect by counties or single districts. When that is determined the wording of the amendment can be altered to correspond with the vote taken.

Mr. E. A. BROWN—We can avoid any difficulty by dividing the question.

Mr. MASTEN—I offer the following amendment:

Insert after the word "aliens" the words "who have not declared, according to law, their

intention to become citizens of the United States."

The question was then put on the amendment of **Mr. Masten**, and it was declared lost.

The **SECRETARY** then read the first division of the proposition of **Mr. Merwin**.

Mr. RUMSEY—I propose to amend that proposition by making the members of the Assembly elected biennially, and I do it for the purpose of following it up by the proposition that we shall have only biennial sessions of the Legislature. I think it will be found that a very large portion of the legislation in this State is confined to local or private legislation, and it seems to me to be entirely manifest that the Convention intends to adopt some measure by which this large amount of private and local legislation shall cease from coming before the Legislature; and if such a measure is adopted by the Convention, there is no need for the annual sessions of the Legislature. It is very evident, **Mr. Chairman**, that a very large portion of the legislation which applies to the public and only to the public interest (if you throw out private legislation) can be done precisely as well by calling the Legislature in session every other year, as it can by having it in session annually.

Mr. E. BROOKS—I hope the amendment moved by the gentleman who has just taken his seat will prevail. I believe it is a wise maxim recognized by most persons who study public measures, that the world is governed too much, and that the frequency of the assembling of our Legislature, instead of contributing to the public good, tends very much to the public disadvantage. I believe it would be a measure of great public economy if the Legislature were to assemble but once in every two years, instead of every year, as at present, and I do not believe in regard to any public question which may require action, that the people will suffer thereby. I do not wish to debate the question, but I believe no measure has been proposed during the consideration of the question now before us, of more public importance than this one, and I believe, sir, that the people, in regard to whom we hear so much, and of whom we say so much, will be entirely satisfied with the proposition, should it become part of the organic law.

Mr. RATHBUN—I will state now, sir, upon this subject, that the Committee on the Powers and Duties of the Legislature have considered this question thoroughly, and they are unanimous, as I understand it, in favor of the proposition offered by the gentleman from Steuben [**Mr. Rumsey**]. They believe that it is better in every possible sense for the people of this State to have a session of the Legislature but once in two years. It is perfectly well known, I apprehend, by the members of the legal profession in this Convention, that one of the greatest annoyances in the world and which occurs every year, is that the legislative provisions of this State are continually changing. No man knows until he gets possession of the Session Laws and goes through and through, reading them from beginning to end, anything about what our law is, and how many changes have been made. They are frequently made with a view to accommodate particular cases, and the rules of evidence are changed to

meet cases that are about to be commenced. They change the rules of evidence about cases that have been long pending. And in that manner legislation has been going on for years, with this constant and vexatious interference by the Legislature, with the rules of evidence, and other provisions existing at the time the right of action in many cases accrued. I hope this amendment will prevail. It is intended on the part of the committee I named to report other amendments in regard to this change, and with a view to carry it out. It seems to me we can hardly do much better than to accept this provision; it will have one effect, which I think members cannot fail to see, and which is very desirable. It will, at all events, relieve the House for one year from the third branch. They will be compelled to go abroad and enter into some occupation and support themselves for one year without depending on the Legislature, and a good many of them will perhaps commit suicide in the mean time, and the balance will probably return to some honorable business or calling that will keep them away from the halls of the Legislature, and for that reason I think it is very desirable this experiment should be tried.

Mr. C. C. DWIGHT—I desire to say I am in favor of the proposition, and to make a single suggestion. As I understand it, the Legislature elected in the manner proposed by the gentleman from Steuben [Mr. Rumsey] will hold their office for two years; and it will be within the province of the Governor, under the article reported by the committee on that subject, to call an extra session of the Legislature should any contingency arise to make it necessary, at other than the time appointed for the regular session.

Mr. ANDREWS—This is a new proposition to me, and I think it will be wholly new to the people of the State. So far as I am advised, no representation upon this subject has been made to this body, nor has this matter received public attention or discussion. I agree, sir, that it is eminently desirable to limit the legislation of the State, and, while I say that, I must also say that, in my judgment, the vast and varied interests of this State, which is in itself almost an empire, require the annual assembling of a Legislature in which is reposed the entire law making power. Now, sir, I think we should limit, as far as we can, the subjects of legislation; but I am entirely opposed to prohibiting the annual assembling of the Legislature when, as we know from the experience of the past, it would have been impossible to have carried along the great public questions in this State which have arisen during the last five years without an annual assembling of the Legislature. Sir, it is because the public exigencies in a State like this often require the frequent assembling of the body of the Legislature that I am in favor of continuing the present system. And, sir, what are we to do? Are we to abrogate substantially, for the period of two years, the supervisory power of the Legislature over the public officers of the State and over all the great interests which are committed to their charge?

Mr. RUMSEY—Will the gentleman allow me to interrupt him? The report of the Committee

on the Powers and Duties of the Legislature has been referred to, and it is therefore not improper for me to say that they have provided in their report that the Governor may call a special session of the Legislature at any time when he shall see fit to do so, stating in his proclamation the purposes and object for which it is called, and that the Legislature shall do no other business.

Mr. ANDREWS—If it should turn out that the Governor himself, unfaithful to the interests of the State, ought to be impeached and removed from that position, I submit that the difficulty and the necessity would not be met by relying upon that officer to convene the Legislature for the purpose of deposing him. I have but this morning taken up the Journal of the Debates of the Convention in Michigan, which are sent to my colleague [Mr. Alvord], and this very subject is a matter of discussion. In that State, where biennial sessions of the Legislature have for a long time been held, I notice a statement in the speech of Mr. Lathrop, Attorney-General of that State, that, although he was originally strongly in favor of that measure, experience has shown to him that it has an unwise limitation of the power of that body, and for those reasons, Mr. Chairman, and because it is a novelty in respect to the Legislature of this State, I am opposed to the proposed amendment.

Mr. FULLER—I agree with the gentleman from Onondaga [Mr. Andrews] that the people have not called for this change, and they do not expect it. I learn another fact from some consultation with my constituents who come down here occasionally from the western part of the State, and that is that there is a sentiment growing up in that part of the State, and daily increasing, that the people will not be inclined to ratify any Constitution which this Convention will probably make, and I think therefore we had better avoid these sweeping changes. Again, sir, I do not think that the proposed amendment will remedy the evil which the gentleman from Cayuga [Mr. Rathbun] complains of. The only effect of having biennial sessions will be to double the length of the sessions when they come, and to double the business of the sessions. You will have just double the amount of laws passed at one session that you do now; it will not remedy the evil complained of, and the Legislature, instead of sitting three or four months, as they do now, will sit six or eight months, and do double the work. That will be substantially the effect of passing the proposed amendment. I think therefore that, as at present advised, I should have to go against it.

Mr. PAIGE—This proposition strikes me favorably. In reference to there being a demand for legislation in the alternate years, that objection has been answered by two delegates, the Governor having the power to make a special call of the Legislature on any particular exigency. Then in reference to the other objection, that the Legislature, sitting only once in two years, the session will be doubled in its length. I do not agree in that conclusion. I think the Legislature sitting only once in two years, would sit no longer than if they sat every year. It seems to me that the crying evil of the time is excessive

legislation, and this proposition is one which commends itself, I think, to the favorable consideration of the Convention and of the people.

The question was then put on the amendment of Mr. Rumsey and it was declared lost.

The CHAIRMAN announced the pending question to be on the first part of Mr. Merwin's amendment, as follows:

"SEC. 4. The Assembly shall consist of one hundred and thirty-nine members, who shall be annually elected. The members of Assembly shall be apportioned among the several counties of the State by the Legislature, as nearly as may be, according to the number of their respective inhabitants, excluding aliens, and shall be chosen by single districts. The apportionment as now established by law shall remain until another enumeration and apportionment as hereinafter provided."

Mr. SEYMOUR—I ask for a division of the latter clause. As it now reads it provides for the election by single districts, and I ask for a division before that.

Mr. WEED—I understand the only difference between this and the original proposition is the question whether we will elect by single districts or by counties.

Mr. SEYMOUR—This adds that the counties shall elect by districts. If you stop short of the last provision, then you will have the provision of the committee, and that is the whole distinction there is in it. If you substitute this for the action of the committee, you substitute single districts for election by counties. If you vote this down, it stands counties.

The question was then put on the first part of Mr. Merwin's amendment, and it was declared lost, on a division, by a vote of 41 to 74.

The CHAIRMAN then announced the question to be on the last part of Mr. Merwin's amendment.

Mr. MERWIN—The last part of the proposition is of no importance now, and I withdraw it.

Mr. BARKER—I move to strike out of lines four and five the following words: "who are citizens of the State," and insert in the place thereof "excluding aliens," so as to have it comply with the section as the committee reported it last night.

The question was put on the amendment of Mr. Barker and it was declared carried.

Mr. MERRITT—On the fourteenth line of the same section make the same change.

There being no objection the correction was ordered to be made.

The SECRETARY then proceeded to read the fifth section, as follows:

SEC. 5. "The members of the Legislature shall receive for their services an annual salary of one thousand dollars, and ten cents for each mile they shall travel in going to or returning from their place of meeting by the most usual route. The Speaker of the Assembly shall receive an additional compensation equal to one-half his salary as a member."

Mr. SCHOONMAKER—I have a proposition to amend.

The SECRETARY proceeded to read the amendment, as follows:

Add to section five, at the end thereof, "No member of either branch of the Legislature shall either directly or indirectly, demand or receive from any source, any other or additional compensation of any character or description, than that above provided, for any services rendered by him in relation to any matter before the Legislature or any of the committees thereof, during the time for which he was elected. And any member who shall, either directly or indirectly, demand or receive any such other additional compensation, his seat shall be declared vacant, and he shall be deemed guilty of bribery and corruption, and punishable therefor."

Mr. GREELEY—I move the following substitute:

SEC. 5. "The Senators shall receive no compensation other than the consciousness of honorable usefulness, and the resulting gratitude of their fellow-citizens."

The CHAIRMAN—The Chair is of the opinion that the amendment of the gentleman from Westchester [Mr. Greeley] is not now in order. The proposition of the gentleman from Ulster [Mr. Schoonmaker] being to add to this section, this cannot be regarded as an amendment to the amendment.

Mr. L. W. RUSSELL—I move this as a substitute to the amendment offered by the gentleman from Ulster [Mr. Schoonmaker].

The SECRETARY proceeded to read the amendment, as follows:

"No Senator or member of Assembly shall draw his pay until the close of the session, when he shall take his oath or affirmation that he has not received or agreed to receive, nor does he expect to receive any money or other property for his vote or other official action as such Senator or member of the Assembly. If he fails to take such oath or affirmation he shall forfeit his pay, and be ineligible to re-election."

The question was put on the amendment of Mr. Russell and it was declared adopted.

The question was then put on the amendment of Mr. Schoonmaker, and it was declared carried.

Mr. GREELEY—I propose now to strike out the words "members of the Legislature" in the beginning of the first line, and insert as follows:

The SECRETARY again read the amendment as follows:

"SEC. 5. The Senators shall receive no compensation, other than the consciousness of honorable usefulness, and the resulting gratitude of their fellow-citizens."

Mr. GREELEY—I propose no experiment, no novelty. The best legislative bodies ever since there were such, have been unpaid bodies. The most honorable, the most useful and the most influential legislative bodies to-day are unpaid. No member of the British Parliament ever receives pay for his services, or would receive it. He has not any office. If he takes office he instantly vacates his seat as a member of Parliament, and has to be re-elected. I propose there shall be one branch of the Legislature, a small body, composed of men who are willing to serve the public without compensation. They need not be rich men. There are poor farmers who will serve honorably and usefully, because they believe it

well and wise to do so. I trust this Convention will be willing to allow one body to be constituted and paid, as the best Legislatures have always been paid in all ages of the world.

The question was put on the amendment of Mr. Greeley, and it was declared lost.

Mr. FOLGER—I move a reconsideration of the vote by which the amendment in relation to the compensation of the members of the Legislature has just been passed.

The question was then put on the motion of Mr. Folger, and it was declared lost.

Mr. T. W. DWIGHT—Do I understand the Chair to state the question to be on the reconsideration of the vote just taken?

The CHAIRMAN—Yes, sir.

Mr. FOLGER—My motion was to reconsider the vote taken on the amendment which proposed that every man should be branded as a rogue when he comes here. I do not know that I have correctly stated it, in words, but that is the substance of it.

Mr. M. I. TOWNSEND—There has been one eternal ding from the time we entered this Convention until now against the corruption of the Legislature, and I want, now that there is a possible opportunity to do something, that we should not lose the advantage we obtain by reason of that opportunity. It is so important, it has been felt we must overturn our whole system of government because the legislators are corrupt. This is one mode of reaching it, and I hope that we shall not, through any fear of branding men as rogues that are not rogues, fail to ask honest men to just say they are not. I hope it will not be reconsidered.

Mr. FOLGER—I call for the reading of the amendment, and I wish to reserve the floor.

The SECRETARY again read the amendment of Mr. L. W. RUSSELL.

Mr. FOLGER—This starts out with the presumption that there are men who will come here with the deliberate design of degrading their official position, and sacrificing their moral character. I shall not affirm or deny but that may be so; but grant that it is so. Grant that there sits in this hall, and in the hall above, winter after winter, men who will pollute their hands and blister their moral character with the reception of bribes, I would ask the gentleman from Rensselaer [Mr. M. I. Townsend] to look at how flimsy a barrier he erects when he provides that they shall swear that they did not receive bribes. It is a mere hedge of hemp which would fall before the blaze of their passions. It would not stand an instant; an oath would not restrict them at all. Men who are corrupt and rotten enough to legislate from bribery, as you concede there are such, will add perjury to their crimes.

The hour of two o'clock having arrived, the committee rose, and the President resumed the Chair in Convention.

Mr. ARCHER, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Legislature, its Organization, etc., and had made some progress therein, and under the resolution adopted by the Convention, had directed their chairman to report back the article to the

Convention, and ask to be discharged from its further consideration.

The SECRETARY proceeded to read the first section as reported, as follows:

SECTION 1 The Legislative power of this State shall be vested in a Senate and Assembly. Any elector of this State shall be eligible to the office of Senator or member of the Assembly.

Mr. WEED—As there have been many changes in very many particulars made in this report, if in order, I move, and I hope if not in order, it will be done by unanimous consent, that the amendments made to this report be printed and placed on our tables this evening, and that we now adjourn till seven o'clock instead of half-past seven. It is one-half hour earlier than our fixed time, and then we can consider it understandingly.

The PRESIDENT—The Chair will inform the gentleman [Mr. Weed] that by a rule passed several days since, the hall this evening is to be used for another purpose.

Mr. WEED—That was only upon condition that we did not use it.

The PRESIDENT—The Chair finds no condition attached to the resolution.

Mr. S. TOWNSEND—I wish, sir, if now in order, to offer an amendment as a substitute for the first section:

The SECRETARY proceeded to read the amendment as follows:

SEC. 1. Every elector of this State shall be eligible for any of the offices herein named.

The supreme legislative power of this State is vested in a Senate and Assembly.

The Legislature at its first session, after the adoption of this Constitution, and from time to time thereafter, shall confer upon the several boards of town, county, village and city officers, the necessary and appropriate powers of legislation and administration for the local government of their several districts.

Mr. S. TOWNSEND—If, sir, I have listened to the debates which have taken place in this body, properly and understandingly, there is an expression which has called for, and a determination shown, to confer larger legislative power, than they have heretofore enjoyed upon the various officers and boards of towns and counties. I am aware, sir, that the committee having this subject more directly in charge, propose to report a provision, substantially embodying this idea, yet it seems to me to be a proper time now to submit this proposition, and to engraft this principle upon the article now under consideration. If this substitute should prevail, I shall then be prepared to vote intelligently upon the question between the large and small district system. If such a provision should be adopted, it will tend to diminish the number of the body of the Senate, so it may assume more of the character of a council of revision. A gentleman who has filled the highest legislative and historical position in this State, and whose presence a few evenings since I was happy to greet on this floor [Hon. Gulian C. Verplanck], now an octogenarian, told me that he opposed continuing that provision in the Constitution of 1821, but he has long been convinced that he was unwise in his opposition to

that measure; and that the only real objection to the provision, was that there was too large a share of the judicial element in the old council of revision, and it should have had a greater proportion of lay members. Having simply suggested these facts to the minds of a body so intelligent as the one I am now addressing, I need hardly care to say anything more. It will also undoubtedly tend to decrease the amount of legislation, which produced last year something like a thousand acts, when twenty years ago the legislation was comprised in perhaps two hundred bills. Twenty-five years ago, when these principles became engrafted in the policy at least of one party of this State, the principles of 1842, were concreted under the organic law of 1846, it was the opinion of the framers of those laws, that if the Legislature properly attended to its duties, and excluded from their consideration all matters of local or special legislation, they might confine the number of laws to one hundred a year. In the Legislatures immediately after the Convention of 1846, there were very few laws passed. If we take this view we may be able to limit the requirements of the Legislature to even a session of sixty days. And we might then have a compensation adequate to a class of men who cannot now get along on a pecuniary remuneration of ten dollars a day, much less three dollars.

Mr. ALVORD — In order to avoid the difficulty we have got ourselves into by the adoption of this resolution, giving the use of this hall for this evening—which I do not wish on my part to take away—I would move that we now take a recess until four o'clock this afternoon.

The question was put on the motion of Mr. Alvord, and it was declared carried.

So the Convention took a recess until four o'clock.

AFTERNOON SESSION.

The Convention re-assembled at four o'clock, when the proceedings were resumed.

Mr. FULLER—I desire to ask leave of absence for myself from to-day until Wednesday next. I have business that needs attention. Besides, my constant attendance upon the sessions has caused the state of my health to become such as to require a short rest.

There being no objection, leave of absence was granted.

Mr. BARKER—I ask for leave of absence for myself from to-morrow's sessions.

There being no objection, leave of absence was granted.

Mr. WALES—I ask for leave of absence for myself from the latter part of the session to-morrow until Monday evening.

There being no objection, leave of absence was granted.

Mr. CHESEBRO—I ask leave of absence until Tuesday morning, from the session of to-morrow.

There being no objection, leave of absence was granted.

Mr. SEYMOUR—I ask for leave of absence until Thursday.

Mr. BICKFORD—Will the gentleman state

what reason he has for asking for so long a leave of absence?

Mr. SEYMOUR—The reason is an engagement of long standing, which is imperative, and must be filled.

There being no objection, leave of absence was granted.

Mr. FRANCIS—I ask for leave of absence for my colleague [Mr. Armstrong] for an indefinite period, on account of ill health.

There being no objection, leave of absence was granted.

Mr. BICKFORD—I deem it wrong to grant these indefinite leaves of absence, although it has been done.

The PRESIDENT—The objection of the gentleman [Mr. Bickford] comes too late.

Mr. T. W. DWIGHT—I ask for leave of absence for Mr. C. E. Parker, of Tioga, who is compelled to go to Syracuse, as a member of a committee, until Tuesday afternoon.

There being no objection, leave of absence was granted.

Mr. FLAGLER—I ask for leave of absence for Mr. Endress, until Wednesday next.

There being no objection, leave of absence was granted.

Mr. LUDINGTON—I have been absent from home five weeks, and I am compelled to ask leave of absence from to-morrow until Tuesday next.

There being no objection, leave of absence was granted.

The PRESIDENT announced the special order of the day, being the report of the Committee of the Whole on the article reported by the Committee on the Legislature, its Organization, etc.

The PRESIDENT announced the pending question to be on the substitute of Mr. S. Townsend to the first section as reported by the Committee of the Whole.

The question was put on the substitute of Mr. S. Townsend, and it was declared lost.

Mr. S. TOWNSEND—I call for the ayes and noes.

The PRESIDENT—The Chair will inform the gentleman that his call came too late.

Mr. BICKFORD—I move to amend by striking out all after the words "members of Assembly," in the second line, and insert, "Any citizen of the State possessing the qualification of an elector except as to residence in the town, ward or election district, shall be eligible to the office of Senator or member of Assembly."

My object in offering this amendment is to make persons eligible who may not be electors in some cases. As we have adopted a suffrage article, a man is not an elector who happens not to have lived in an election district for ten days, or in a town thirty days, and in a county four months. Although he may have been a resident of the senate district all his life, he is not eligible, as the section now stands, to vote for a Senator, unless he has lived in the election district for ten days, and in the town for thirty days, and in the county for four months. It is absurd as it now stands.

The question was put on the amendment of Mr. Bickford, and it was declared lost.

Mr. S. TOWNSEND—I move a reconsidera-

tion of the last vote, and ask that the motion lie upon the table.

The PRESIDENT—The motion to reconsider will lie upon the table, as requested.

The SECRETARY proceeded to read the second section, as follows:

SEC. 2. The State shall be divided into thirty-two senate districts, each of which shall choose one Senator, and the term of office shall be four years.

The first district shall consist of the counties of Suffolk, Queens and Richmond.

The second district shall consist of the first, second, third, fourth, fifth, seventh, eleventh, thirteenth, fifteenth, nineteenth and twentieth wards of the city of Brooklyn, in Kings county.

The third district shall consist of the sixth, eighth, ninth, tenth, twelfth, fourteenth, sixteenth, seventeenth and eighteenth wards of the city of Brooklyn, and the towns of Flatbush, Flatlands, Gravesend, New Lots and New Utrecht, of the county of Kings.

The fourth district shall consist of the first, second, third, fourth, fifth, sixth, seventh, thirteenth and fourteenth wards of the city of New York.

The fifth district shall consist of the eighth, ninth, fifteenth and sixteenth wards of the city of New York.

The sixth district shall consist of the eleventh, tenth and seventeenth wards of the city of New York.

The seventh district shall consist of the eighth, twentieth and twenty-first wards of the city of New York.

The eighth district shall consist of the twelfth, nineteenth and twenty-second wards of the city of New York.

The ninth district shall consist of the counties of Westchester, Putnam and Rockland.

The tenth district shall consist of the counties of Orange and Sullivan.

The eleventh district shall consist of the counties of Dutchess and Columbia.

The twelfth district shall consist of the counties of Rensselaer and Washington.

The thirteenth district shall consist of the county of Albany.

The fourteenth district shall consist of the counties of Greene and Ulster.

The fifteenth district shall consist of the counties of Saratoga, Montgomery, Fulton, Hamilton and Schenectady.

The sixteenth district shall consist of the counties of Warren, Essex and Clinton.

The seventeenth district shall consist of the counties of St. Lawrence and Franklin.

The eighteenth district shall consist of the counties of Jefferson and Lewis.

The nineteenth district shall consist of the county of Oneida.

The twentieth district shall consist of the counties of Herkimer and Otsego.

The twenty-first district shall consist of the counties of Oswego and Madison.

The twenty-second district shall consist of the counties of Onondaga and Cortland.

The twenty-third district shall consist of the counties of Chenango, Delaware and Schoharie.

The twenty-fourth district shall consist of the counties of Broome, Tioga and Tompkins.

The twenty-fifth district shall consist of the counties of Cayuga and Wayne.

The twenty-sixth district shall consist of the counties of Ontario, Yates and Seneca.

The twenty-seventh district shall consist of the counties of Chemung, Schuyler and Steuben.

The twenty-eighth district shall consist of the county of Monroe.

The twenty-ninth district shall consist of the counties of Niagara, Orleans and Genesee.

The thirtieth district shall consist of the counties of Wyoming, Livingston and Allegany.

The thirty-first district shall consist of the county of Erie.

The thirty-second district shall consist of the counties of Chautauqua and Cattaraugus.

At the first election under said arrangement of districts, the Senators elected in districts bearing odd numbers shall vacate their offices at the end of two years, and those elected in districts bearing even numbers at the end of four years; and if vacancies occur by the expiration of term, they shall be filled by the election of Senators for the full term of four years.

Mr. SHERMAN—I move to amend by substituting for the section the following:

"The State shall be divided into eight senate districts. There shall be four Senators in each district. The Legislature, at its first session after the adoption of this Constitution, shall divide the State into eight senate districts, to be composed of convenient and contiguous territory so that each may contain as nearly as may be an equal number of inhabitants, excluding aliens. The districts shall remain unaltered until the return of another enumeration. A like apportionment shall be made by the Legislature at its first session after each enumeration. The whole Senate shall be chosen at the first election held under this Constitution; they shall classify themselves so that one Senator in each district shall go out of office at the end of each year. After the expiration of their terms under such classification the terms of their office shall be four years."

I do not propose to discuss this proposition; it has been fully and ably discussed on all sides. It is the large district system leaving out the bugbear of apportionment which has frightened the gentleman from Richmond [Mr. E. Brooks], and other nervous gentlemen, professing to favor the large districts, from their propriety and leaving the apportionment to the Legislature. I wish the ayes and noes to be taken on the proposition, so that gentlemen who are in good faith in favor of the large districts may be able to so record themselves.

A sufficient number seconding the call the ayes and noes were ordered.

Mr. DALY—I call for a division of the question, so as to distinguish between the vote in favor of large districts, and the vote referring the matter of apportionment to the Legislature.

The SECRETARY proceeded to read the first portion of the substitute as follows:

"The Senate shall be divided into eight senate districts. There shall be four Senators in each district."

The question was announced on the first portion of the substitute as proposed by Mr. Sherman.

The name of Mr. Hatch was called.

Mr. HATCH—I have paired with Mr. Comstock, who would vote in the affirmative. I should vote no.

The PRESIDENT—The gentleman will be excused.

The name of Mr. McDonald was called.

Mr. McDONALD—I should vote in favor of the large district system, but I have paired with Mr. Goodrich.

The name of Mr. Sherman was called.

Mr. SHERMAN—I have paired with Mr. Gerry. I should vote in the affirmative, and he in the negative.

The SECRETARY proceeded to call the roll on the first part of the substitute of Mr. Sherman, and it was lost by the following vote, viz.:

Ayes—Messrs. C. L. Allen, Alvord, Andrews, Barker, Bell, Bowen, Chesebro, Cooke, Daly, Duganne, C. C. Dwight, T. W. Dwight, Field, Folger, Francis, Frank, Greeley, Harris, Hutchins, Jarvis, Kernan, Ludington, Merritt, Merwin, Monell, Paige, President, Rathbun, Schoonmaker, Seaver, Seymour, Van Cott—32.

Noes—Messrs. A. F. Allen, Archer, Axtell, Baker, Ballard, Barnard, Beadle, Beals, Bergen, Bickford, E. Brooks, E. P. Brooks, E. A. Brown, W. C. Brown, Burrill, Carpenter, Corbett, Corning, Eddy, Endress, Flagler, Fowler, Fuller, Fullerton, Garvin, Gould, Grant, Graves, Gross, Hadley, Hammond, Hand, Hardenburgh, Hitchcock, Hitchman, Houston, Ketcham, Kinney, Krum, Landon, Larremore, A. Lawrence, A. R. Lawrence, M. H. Lawrence, Lee, Livingston, Loew, Lowrey, Masten, More, Morris, Opdyke, A. J. Parker, Prindle, Prosser, Reynolds, Robertson, Rogers, Rolfe, Roy, Rumsey, A. D. Russell, Schell, Schumaker, Spencer, Stratton, Tappen, M. I. Townsend, S. Townsend, Van Campen, Wakeman, Wales, Wickham, Williams—74.

The PRESIDENT—The first part of the proposition being lost, the remaining proposition falls of its own weight.

Mr. SCHOONMAKER—I offer the following substitute for the second section:

SEC. 2. The State shall be divided into eleven senate districts, and the Senate shall consist of thirty-three members, three to be elected from each senate district. The Legislature shall at its first session after the adoption of this Constitution divide the State into eleven senate districts, which districts shall respectively contain as near as may be an equal number of inhabitants, excluding aliens, and consist of contiguous territory. No county, unless it shall have population sufficient to entitle it to four or more members, shall be divided in the formation of a senate district. The entire Senate shall be chosen at the first general election held under this Constitution, and they shall at the commencement of the first session classify themselves by lot, in such manner that one Senator in each district shall go out of office at the end of the first year, another in each district go out of office at the end of the second year, and the third go out of office at the end of the third year. After the

first election, one Senator shall annually at the general election be chosen in each senate district to hold office for the term of three years.

Mr. CHESEBRO—Although I approve of the general features of the substitute offered by the gentleman from Ulster [Mr. Schoonmaker], I desire to offer an amendment to one of the propositions that shall be introduced; and perhaps I may as well introduce it as an amendment to the substitute offered by the gentleman [Mr. Schoonmaker]. It is to strike out the words "excluding aliens," and on that I ask the ayes and noes.

Not a sufficient number seconding the call, the ayes and noes were not ordered.

The question was put on the amendment of Mr. Chesebro, and it was declared lost.

Mr. SCHOONMAKER—I call for the ayes and noes on my proposition.

Mr. RUMSEY—I move to amend the substitute offered by the gentleman from Ulster [Mr. Schoonmaker], so as to provide that the term of office shall be six years, and that one Senator in each district of those first elected shall go out of office at the end of two years, one at the end of four years, and one at the end of six years.

The question was put on the amendment of Mr. Rumsey and it was declared lost.

Mr. SEAVER—I hope that the substitute offered by the gentleman from Ulster [Mr. Schoonmaker] will be adopted by the Convention. It strikes me to be eminently wise and just. It is a compromise between the large district and the small district systems, and it insures the permanency of the body as a conservative element in our legislation. I do not desire to consume the time of the Convention by protracted remarks, but I hope that those members who favor small districts so persistently will so far compromise their views in this respect as to meet the proposition in regard to large districts on middle ground.

Mr. HARRIS—I hope that this proposition will meet with favor. It secures, besides, the permanency of the Senate, which I consider a very important object this: it throws into the Senate every year an expression of the public sentiment, and allows all the voters of the State to vote for a Senator every year, and I think that is very desirable. I hope, therefore, that the proposition will be sustained.

Mr. M. I. TOWNSEND—I hope that the proposition will not be sustained. I hope that the gentlemen in this Convention who are really in favor of the single district system will not vote for it. I do not see any compromise features in it at all.

Mr. SEYMOUR—I wish merely to say that from the first I have been an earnest advocate of the large district system;—

Mr. KRUM—I rise to a point of order. Two gentlemen have spoken on each side.

A DELEGATE—You do not know on which side the gentleman [Mr. Seymour] is going to speak.

Mr. SEYMOUR—I am on the side of compromise, and am willing to meet those who have gone for small districts on the basis of this proposition, although I favored large ones.

Mr. M. I. TOWNSEND—I call the gentleman to order, as two gentlemen have spoken on the side of compromise. [Laughter.]

The PRESIDENT—Four gentlemen have spoken, and the question is now on the adoption of the substitute offered by the gentleman from Ulster [Mr. Schoonmaker].

The ayes and noes were called for, and a sufficient number seconding the call, they were ordered.

The SECRETARY proceeded to call the roll on the substitute offered by Mr. Schoonmaker.

Mr. Hatch, Mr. McDonald and Mr. Gerry were excused from voting on the ground that they had paired as stated on the previous vote.

The call of the roll being completed, and the substitute of Mr. Schoonmaker was lost by the following vote, viz.:

Ayes—Messrs. C. L. Allen, Alvord, Andrews, Barker, Bell, Bowen, E. Brooks, W. C. Brown, Case, Champlain, Chesebro, Church, Cooke, Daly, Duganne, C. C. Dwight, T. W. Dwight, Evarts, Field, Folger, Francis, Frank, Greeley, Harris, Hutchins, Kernan, Ludington, Merritt, Merwin, Paige, President, Rathbun, Schoonmaker, Schumaker, Seaver, Smith, Van Cott—37.

Noes—Messrs. A. F. Allen, Archer, Axtell, Baker, Ballard, Barnard, Beadle, Bergen, Bickford, E. P. Brooks, E. A. Brown, Burrill, Carpenter, Corbett, Corning, Eddy, Endress, Flagler, Fowler, Fuller, Fullerton, Garvin, Gould, Grant, Graves, Gross, Hadley, Hammond, Hand, Hardenburgh, Hitchcock, Hitchman, Horston, Jarvis, Ketcham, Kinzey, Kram, Landon, Larremore, A. Lawrence, A. R. Lawrence, M. H. Lawrence, Lee, Livingston, Lowrey, Masten, Mattice, Monell, More, Morris, Opdyke, A. J. Parker, C. E. Parker, Prindle, Prosser, Reynolds, Robertson, Rogers, Rolfe, Roy, Rumsey, A. D. Russell, L. W. Russell, Schell, Spencer, Stratton, Tappen, M. I. Townsend, S. Townsend, Van Campen, Wakeman, Wales, Wickham, Williams—75.

Mr. FIELD—I offer the following substitute:

"The State shall be divided into sixteen senate districts, and each district shall elect a Senator each year for the term of two years; the districts bearing even numbers electing in the years being even numbers, and the other districts in the alternate years."

Mr. BOWEN—Is an amendment now in order?

The PRESIDENT—It is.

Mr. BOWEN—Then I move to amend the substitute of the gentleman from Orleans [Mr. Field] by extending the term to four years, and having an election in alternate years.

The question was put on the amendment of Mr. Bowen, and it was declared lost.

The question then recurred on the amendment offered by Mr. Field, and it was declared lost.

Mr. GREELEY—I move as a substitute the first section of my amendment, to be found in document 49.

The SECRETARY proceeded to read the substitute offered by Mr. Greeley, as follows:

"Sec. 2. The Legislature for 1868 shall divide the State into fifteen senate districts, whereof each shall contain, as nearly as may be, with due regard to the integrity of counties, an equal number of legal voters, and whereof each district

shall be entitled to elect three Senators. Each voter may, at his discretion, repeat twice or thrice on his ballot for Senator the name of a candidate, provided, that all the names borne thereon, including repetitions, shall not exceed three; and each ballot shall be counted two or three votes, as the case may be, for any candidate whose name may be thus repeated. The Senators thus chosen shall hold their office for — years; and any vacancy meantime occurring shall be filled by election as heretofore. On the expiration of the terms of Senators, their places shall be filled as above."

I desire simply to correct one or two misapprehensions which the debate has shown to exist. In this amendment, it is proposed to have fifteen senate districts, each containing 55,000 electors. Now, if in any district the minority party, or any minority, shall number so many as 14,000 electors—over one-quarter of the whole number—the minority can surely elect one Senator, by nominating a single candidate, and printing his name thrice on each ballot, which would give the candidate 42,000 votes; and it is not possible that the larger party, having but 41,000 voters in all, can, by any permutation or management, prevent the minority from choosing one Senator. Now, this State cannot be so divided that there will be more than one district in which the minority will not be equal to 14,000 out of the 55,000 voters. Fairly divided, there will not be one single district in which the minority cannot elect one Senator. One gentleman has said that two factions of one party might conspire with each other; that they might divide, and subdivide, and contrive by management to elect all three Senators; but no, they cannot possibly prevent the minority from electing one Senator. Again, a gentleman on the floor said that no party would confess itself in the minority. No party need do so; where the disparity is notorious, palpable, it will do so; but in every other district each party will nominate two candidates, and try to elect both; and the party which is the stronger will elect the two, and the weaker party will elect one. It is just as good for persons outside of any party. Here are independent voters choosing to elect some able and eloquent man, who stands outside of any party organization. If they exceed one-quarter of the voters of the district, they can elect that man, by cumulating his name on their ballots. This is a plan to allow a minority to have a representative—to allow the whole people to be represented. You now have 400,000 electors out of 700,000 represented in the Legislature. I propose that the whole 700,000 shall be represented, the minority as well as the majority. I hope the Convention will allow the ayes and noes to be taken on this proposition.

Mr. A. J. PARKER—I am not one of those who subscribe to the doctrine that the majority are of right to govern, and that that is a republican doctrine of itself. Majorities do govern under our present system from the necessity of the case. The minority cannot be represented in our present mode of choosing representatives. But the true democratic doctrine undoubtedly is that which will give all a participation in the government. If a man cannot personally participate, as in a simple

democracy, then he should do so through his representatives, and that representative should be one who will represent his sentiments. I cannot, therefore, agree with the sweeping remark made by two or three gentlemen, that it is a democratic doctrine, that the majority shall govern. The majority may be as despotic as the one-man power. I think we all know that that can be so. I favor this proposition presented by the gentleman from Westchester [Mr. Greeley], because I think it is a move in the right direction. It proposes a mode by which the minority may be represented. I do not think it is the best mode. I prefer one by which a voter should be permitted to vote for a portion of the candidates. But nevertheless this proposition does, to a certain extent, secure the representation of the minority in all the districts where the minority exists in the proportion of one-third of the votes.

Mr. GREELEY—One-fourth.

Mr. A. J. PARKER—One-third, three being elected. I prefer a different system, that is, to have districts where four shall be elected, each elector voting only for three of the candidates. It is said that this is a new, and untried experiment. It certainly is not. It is precisely what we have been doing in choosing inspectors of election for a number of years. It is said that it would give the management of affairs to politicians, and not to the people. Certainly that would not be the case, because each party would run three candidates, and there would be as much of a contest at the polls as if four were to be elected by each party. It is very different from the plan by which each party nominates only one-half, and where there is no struggle for the election. Now, the plan I propose would go further than this to represent the minority; because in all cases where there was a difference of one-quarter between the majority and the minority, it would be impossible, in the manner pointed out by the gentleman from Chenango [Mr. Prindle] to prevent the minority from being represented. I do not think there are two counties in this State where the parties are so situated that it would be possible, even on theory, to form such a combination as would prevent the minority from being represented by the fourth man. I am sure there is no county in the State where it would be practicable to secure such a result. It is not enough to show by figures that such a result could be accomplished; for no one would risk the success of the whole ticket, by finessing in that way. As I said, I shall support this amendment because it is a move in the right direction.

Mr. W. C. BROWN—I desire to offer this amendment, which I think will carry out the same purpose:

Amend section two by striking out the words "legal voters" in the fourth line, and insert "inhabitants, excluding aliens," and strike out the words "each voter" in the sixth line, and down to the words "the Senators," and insert "but no ballot shall contain the names of more than two persons for the office of Senators."

Also, amend the last paragraph of the section four by striking out the words "a repetition of," and insert "the number of."

Mr. GREELEY—I hope the Convention will

allow the question to be taken on my proposition; and then, if the gentleman wishes to move his amendment, he can do so.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. SCHOONMAKER—I ask for a division of the question.

SEVERAL DELEGATES—No! No!

The SECRETARY called the roll on the amendment of Mr. Greeley, and it was lost by the following vote:

Ayes—Messrs. E. Brooks, Champlain, Chesebro, Church, Cooke, Daly, Field, Greeley, Hardenburgh, Hitchman, Hutchins, Ketcham, Krum, Larremore, Paige, A. J. Parker, Schumaker, Stratton, Tappen, Weed—20.

Noes—Messrs. A. F. Allen, C. L. Allen, Alvord, Andrews, Archer, Axtell, Baker, Ballard, Barker, Barnard, Beadle, Bell, Bergen, Bickford, Bowen, E. P. Brooks, E. A. Brown, W. C. Brown, Burrill, Carpenter, Case, Corbett, Corning, C. C. Dwight, T. W. Dwight, Eddy, Endress, Evarts, Flagler, Folger, Fowler, Francis, Frank, Fuller, Fullerton, Garvin, Gould, Grant, Graves, Gross, Hadley, Hammond, Harris, Hatch, Hitchcock, Houston, Jarvis, Kernan, Kinney, Landon, A. Lawrence, A. R. Lawrence, M. H. Lawrence, Lee, Livingston, Loew, Lowrey, Ludington, Masten, McDonald, Merritt, Merwin, Monell, Morris, Opdyke, C. E. Parker, President, Prindle, Prosser, Rathbun, Reynolds, Robertson, Rogers, Rolfe, Roy, Rumsey, A. D. Russell, L. W. Russell, Schell, Schoonmaker, Seaver, Seymour, Sherman, Smith, Spencer, Strong, M. I. Townsend, S. Townsend, Van Cott, Wakeman, Wales, Wickham, Williams—93.

The SECRETARY again read the resolution offered by Mr. W. C. Brown.

Mr. ALVORD—I move to strike out the four years' term, and reduce it to the term provided by the provision in the present Constitution, of two years.

Mr. KRUM—I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was put on the amendment of Mr. Alvord, and it was lost by the following vote:

Ayes—Messrs. A. F. Allen, Alvord, Andrews, Archer, Axtell, Barker, Beals, Bell, Bickford, E. A. Brown, Champlain, Church, Cooke, C. C. Dwight, Eddy, Field, Folger, Fowler, Grant, Graves, Greeley, Hadley, Harris, Hatch, Hitchcock, Hutchins, Kernan, Ketcham, Krum, Landon, M. H. Lawrence, Loew, Ludington, Prindle, Rathbun, Schell, Seaver, Stratton, Tappen, Van Campen, Wickham—41.

Noes—Messrs. C. L. Allen, Baker, Ballard, Barnard, Beadle, Bergen, Bowen, E. P. Brooks, W. C. Brown, Burrill, Carpenter, Case, Chesebro, Corbett, Corning, Daly, Duganne, T. W. Dwight, Evarts, Flagler, Francis, Frank, Fuller, Fullerton, Garvin, Gould, Gross, Hammond, Hand, Hitchman, Houston, Jarvis, Kinney, Larremore, Law, A. Lawrence, A. R. Lawrence, Lee, Livingston, Lowrey, Masten, McDonald, Merritt, Merwin, Monell, Morris, Opdyke, Paige, A. J. Parker, C. E. Parker, President, Prosser, Reynolds, Robertson, Rogers, Rolfe, Roy, Rumsey, A. D. Russell,

L. W. Russell, Schoonmaker, Schumaker, Seymour, Sherman, Smith, Spencer, Strong, S. Townsend, Van Cott, Wakeman, Wales, Williams—72.

Mr. A. J. PARKER—I offer this as an amendment to the second section :

SEC. 2. The Legislature for 1868 shall divide the State into eight senate districts, to be numbered from one to eight, inclusive, each district to consist of contiguous territory and to contain as nearly as may be an equal number of inhabitants, excluding aliens. No county shall be divided, except it shall contain a greater population than is necessary for one senate district.

There shall be thirty-two Senators, four to be elected in each senate district. The term of office shall be four years, except that the Senators chosen at the first election in the first, third, fifth and seventh districts shall hold their offices for two years only.

The first election shall take place at the general election in 1866, and no elector shall, either at the first, or at any subsequent election, vote for more than any three candidates.

My proposition is that no elector shall be permitted to vote for more than three candidates of the four who are to be elected. I insist that, notwithstanding what has been said in Committee of the Whole, by one or two gentlemen, it is not possible, in any district of the State, for the majority to prevent the election of one of the four by the minority. No combination could be formed that would secure that result. The majority is not sufficiently large, that you may take one-half for electing three and the other half of the majority to elect the other one. And besides, we all know perfectly well, that in this case, as in the case of choosing inspectors of election, and in all cases where we vote in this way, each party makes out its own entire ticket for the three candidates, and votes it, hoping to elect the whole. I do not desire to take up the time of this Convention. I know that the Convention does not much favor the representation of minorities, as is evident from the vote upon the proposition of the gentleman from Westchester [Mr. Greeley]. But I deem the proposition to be so fair, that it would be one which the people would approve, while it would secure representation to men of all different political opinions in every district of the State. I believe it to be of such a character as to avoid the evil which the gentleman from Genesee [Mr. Wakeman] spoke of the other day, of having one end of the State represented entirely by one party, and the rest of the State by the other party. I agree with him entirely, that it is best, if practicable, to so arrange the system that minorities may be represented everywhere. In no other way can the wants of all sections and the opinions of all parties be made known to the Legislature, and in no other way can all interests be protected.

Mr. BALLARD—It is now ten minutes past five, and much time has been expended in the discussion of this section. I move the previous question on it.

The question was put on the motion of Mr. Ballard, ordering the previous question, and it was declared carried.

Mr. A. J. PARKER—I call for the ayes and noes on my proposition.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put on the amendment of Mr. Parker, and was lost by the following vote :

Ayes—Messrs. E. Brooks, Champlain, Chesebro, Church, Conger, Cooke, Corning, Kernan, Krum, Paige, A. J. Parker, Roy, S. Townsend, Wakeman—14.

Noes—Messrs. A. F. Allen, C. L. Allen, Alvord, Andrews, Archer, Baker, Ballard, Barker, Barnard, Beadle, Beals, Bergen, Bickford, Bowen, E. P. Brooks, E. A. Brown, Burrill, Carpenter, Case, Corbett, Duganne, C. C. Dwight, T. W. Dwight, Eddy, Evarts, Field, Flagler, Folger, Fowler, Francis, Frank, Fuller, Fullerton, Garvin, Gould, Grant, Graves, Greeley, Gross, Hadley, Hammond, Hand, Harris, Hitchcock, Hitchman, Houston, Jarvis, Ketcham, Kinney, Landon, Law, A. Lawrence, A. R. Lawrence, M. H. Lawrence, Lee, Livingston, Loew, Lowrey, Ludington, McDonald, Merritt, Merwin, Monell, More, Morris, C. E. Parker, President, Prindle, Prosser, Reynolds, Robertson, Rogers, Rumsey, A. D. Russell, L. W. Russell, Schell, Schoonmaker, Seaver, Seymour, Sherman, Spencer, Stratton, Strong, Van Campen, Van Cott, Wales, Williams—87.

The question then recurred on the second section, as reported by the Committee of the Whole, and it was carried, on a division, by a vote of 71 to 15.

Mr. BICKFORD—I move to reconsider the vote just taken, with the view of moving to reconsider the vote taken upon the proposition offered by the gentleman from Onondaga [Mr. Alvord].

Objection being made, the motion was laid over under the rule.

The SECRETARY proceeded to read the third section as reported by the Committee of the Whole, as follows :

SEC. 3. An enumeration of the inhabitants of the State shall be taken, under the direction of the Legislature, in the year one thousand eight hundred and seventy-five and at the end of every ten years thereafter; and the said districts shall be so altered by the Legislature at the first session after the return of every enumeration, that each district shall contain as near as may be an equal number of inhabitants of the State excluding aliens and shall remain unaltered until the return of another enumeration, and shall consist of contiguous territory. No county shall be divided in the formation of a senate district, unless said county shall be entitled to two or more Senators.

Mr. MASTEN—I desire to offer the amendment which I offered in Committee of the Whole, to insert after the words "excluding aliens" the words "who have not declared, pursuant to law, their intention to become citizens of the United States." I did not intend to say anything on the subject, but, while I am up, I will say a word or two. It will be remembered that we are not determining who are to be electors of the State, but are determining what persons shall be included in the enumeration which is to be the basis of representation. As the section now stands, all persons except aliens are included, the old and the young, the rich and the poor, the

high and the low, the guilty and just, the white and the black. Now, sir, it seems to me just that another class should be added, to wit: those persons who have come here and settled among us, who have solemnly declared upon oath that they intend to become citizens of the United States; this class of persons it seems to me should be included in the enumeration, and be entitled to representation. Now, sir, it has fallen to my lot to naturalize a large number of persons. Now not from a sense of duty, but from a sense of curiosity, and for information, I have been in the habit of propounding to every one of them this question: Have you any real estate? And the result of this inquiry, sir, has assured me that it will be found that of the persons who make application to become citizens, the proportion who hold real estate is equal to the proportion of citizens who hold real estate, so that we have a class of citizens—I say citizens, because they are *quasi* citizens—over whom the government extends its protection, and who to a very large extent are property-holders, who are not included in this enumeration. I think they should be included. I think the statement of the proposition carries with it its own demonstration.

Mr. GRICKLEY—I simply desire to know how the Legislature is to ascertain who have declared their intentions. We know who are aliens and who are not by the census returns; but there is no possible mode of ascertaining the number of those who have declared their intentions. They are not discriminated in our documents at all.

Mr. MASTEN—We would ascertain in the same manner that we discover that persons are aliens—by inquiry.

Mr. CONGER—I call for the ayes and noes on the amendment of the gentleman from Erie [Mr. Masten].

A sufficient number seconding the call, the ayes and noes were ordered.

The SECRETARY proceeded to call the roll on the amendment of Mr. Masten, and it was lost by the following vote:

Ayes—Messrs. Barnard, Bergen, E. Brooks, Burrill, Champlain, Chesebro, Church, Conger, Corning, Field, Garvin, Gross, Hadley, Hardenburgh, Hatch, Hitchman, Jarvis, Kernan, Larremore, Law, A. R. Lawrence, Livingston, Masten, Monell, Morris, A. J. Parker, Prosser, Robertson, Rogers, Roy, A. D. Russell, Schell, Schoonmaker, Seymour, Strong, S. Townsend, Van Campen, Weed, Wickham—40.

Noes—Messrs. A. F. Allen, C. L. Allen, Alvord, Andrews, Archer, Axtell, Baker, Ballard, Barker, Beadle, Beals, Bickford, Bowen, E. P. Brooks, E. A. Brown, W. C. Brown, Carpenter, Case, Cooke, C. C. Dwight, T. W. Dwight, Endress, Evarts, Folger, Fowler, Francis, Frank, Fuller, Gould, Grant, Graves, Greeley, Hammond, Hand, Harris, Hitchcock, Hutchins, Kinney, Krum, Landon, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merritt, Merwin, President, Rathbun, Reynolds, Rumsey, L. W. Russell, Spencer, Van Cott, Wakeman, Wales, Williams—57.

Mr. SCHUMAKER—I move a reconsideration of the vote just taken.

Objection being made, the motion laid over, under the rule.

Mr. BURRILL—I offer the following amendment:

Strike out the words "every enumeration" in sixth line, and insert in lieu thereof the words "after the United States census in 1870, and after every subsequent enumeration made under the direction of the Legislature of the State."

I offered an amendment last night in Committee of the Whole, and all the provisions which I thereby sought to secure were incorporated in section three, as amended, with the exception of this one, which provides that there shall be a new apportionment, on the basis of the federal census of 1870. It has been asserted here that the census of 1865 was incorrect. Whether it is so or not, it is sufficient to know that a large portion of the population of the city of New York believe that such census did not do that city justice. Some complaint in regard to that census may, perhaps, also be justly made on behalf of other districts of the State. All which we now ask is that the apportionment may be on the basis of the Federal census of 1870, which would cost the State nothing, and the cost of making the apportionment would be very slight.

Mr. ALVORD—I trust the Chair will rule the amendment of the gentleman [Mr. Burrill] out of order. We have just taken a vote, by means of which we have determined that aliens shall be excluded. Now, under his proposition, if we take an enumeration under the federal census of 1870, which does not exclude aliens in the enumerations of the citizens of the United States, we shall have been going back upon that which we have just provided.

The PRESIDENT—The Chair will leave that question to the Convention. It does not deem it its province to overrule it.

The ayes and noes were called for.

Not a sufficient number seconding the call, the ayes and noes were not ordered.

The question was put on the amendment of Mr. Burrill, and it was declared lost.

Mr. CONGER—I move to strike out the words "excluding aliens" altogether, without any qualification.

The question was put on the amendment of Mr. Conger, and it was declared lost.

Mr. GREELEY—I move to strike out the words "two or more," near the close of the section, and insert "more than one."

Mr. A. J. PARKER—I hope the amendment will not prevail. It allows less than the full ratio.

The question was then put on the amendment of Mr. Greeley, and it was declared lost.

Mr. GOULD—The amendment that I offered last evening seemed to meet with very little favor in the afternoon, and I offer it again to-day with a view to present it and to state some of the advantages which I expect to flow from it. The amendment is as follows:

"No person shall be permitted to vote for a Senator who has not paid a town, county, or State tax within twelve months next preceding the election."

I was unable, under the operation of the twenty-minute rule, to present last evening certain considerations. One of the most important matters which I suppose this Convention was

sent here to frame, was the prevention of corruption at the polls and corruption in the Legislature. Now, it seems to me that this amendment has the effect of striking at the very core of this evil. If you have taxpayers represented in one chamber, it is very clear that the persons which represent the tax payers will not vote to spend public money corruptly—that they will not vote for this expenditure for the advantage of officers or corporations, if it must come out of the pockets of those whom they represent; if you have one chamber in the Legislature which is absolutely clear of this tendency to corruption, that it is impossible to move them by a bribe, then clearly it is very useless for anybody to attempt to corrupt the Assembly, because both chambers must agree in the enactment of a law. Those, therefore, who have been in the habit of corrupting the Assembly will cease to do so because it will be of no use, and if members of the Assembly are not approached by those who desire to corrupt there will be no temptation on the part of candidates to expend large sums of money at the polls, and in this way the Legislature will be purified and the voting population will not labor under the temptations which they have hitherto labored under. There is another advantage in my estimation which will flow from the adoption of this amendment, and that is, that the farming population of the State will be able to maintain their relative power in the government. It is obvious to any one who examines our successive censuses that the relative proportion of farmers is continually decreasing, while the population of cities is continually gaining upon the agricultural population. It is not impossible that the cities within the lifetime of our children now born, will be very much greater than the population of the country. I think we cannot look without alarm at such a consequence as that. Those who extended the franchise in 1821 relied upon that very argument. They said it was safe to extend the franchise because the farming population was incorruptible, and they will always bear a greater proportion to the full number of inhabitants of the State.

Here the gavel fell, the five minutes having expired.

The question was put on the amendment of Mr. Gould, and it was declared lost.

Mr. GOULD — I call for the ayes and noes.

The PRESIDENT — The call is too late.

Mr. McDONALD — I move to amend by adding at the end of the section these words: "but no county shall be entitled to more than six Senators." The object of this amendment is very apparent. In a body of thirty-two Senators it seems to me it is not safe to have any one corporation or any one interest represented by more than six Senators. It is not the case in this State or in any other State in this Union. If the proposition was made that the State of New York should have six Senators in the United States Senate, you would be met by the strongest opposition, although the State of New York has six times the amount of inhabitants of many of the States. It does seem to me that if there is anything we have to fear, it is having great interests so largely represented in the Legislature. The action of

this body has shown that the city of New York is to be represented by a united body in the lower House, and when they seek to combine with this power in the lower House six Senators out of thirty-two, it does seem to me it ought not to be granted. Nor is it anything against the city of New York. The city of New York comes here now and admits that, on the strict representative principle, according to the number of inhabitants, with or without aliens, they cannot govern themselves. They are here, asking that the Legislature shall govern them partially, or provide for a government not strictly representative; and when that admission is made I think they should not ask that they have more than six Senators in a body of thirty-two.

Mr. E. BROOKS — Will the gentleman inform me what representative of New York has made any such admission, that the people of New York were incapable of governing themselves?

Mr. McDONALD — It was not made directly in that way, but I understood from some of its representatives that they wanted in New York one of the two boards of the common council should be restricted by a property qualification or something of that kind.

Mr. WEED — I move to amend the amendment of the gentleman from Ontario to make it—

Mr. GREELEY — I move the previous question on the third section.

The question was put on ordering the previous question, and it was declared carried.

The question was put on the amendment of Mr. McDonald, and it was declared lost.

The question then recurred on the third section as read by the Secretary, and it was declared adopted.

The SECRETARY proceeded to read the fourth section, as follows:

SEC. 4. The Assembly shall consist of one hundred and thirty-nine members, who shall be chosen by counties, and shall be apportioned among the several counties of the State, as near as may be, according to the number of inhabitants thereof, excluding aliens, and shall hold office for one year. Each county shall be entitled to at least one member, except that the counties of Fulton and Hamilton shall together elect until the population of the county of Hamilton shall, according to the ratio, entitle it to a member. No new county shall be erected unless the population shall entitle it to a member. The first apportionment of members of Assembly shall be made by the Legislature at its first session after the adoption of this Constitution, upon the enumeration of the inhabitants of this State, excluding aliens, made in the year 1865. A like apportionment shall be made by the Legislature at its first session after every such enumeration. Every apportionment when made shall remain unaltered until another enumeration shall be made.

Mr. E. BROOKS — I move to insert the words "one hundred and twenty-nine" instead of "one hundred and thirty-nine."

The question was put on the amendment of Mr. E. Brooks, and it was declared lost.

Mr. KINNEY — I offer the following amendment:

Insert after the word "number," in the tenth

line, the words following: "Nor in the erection of any new county shall the population of any other county be reduced below such ratio."

Mr. KINNEY—The provision in the report of the committee, which prohibits the erection of new counties until such new county shall have population enough to entitle it to a member, is a very wise and proper one; but the idea of the committee will not be fully carried out without my amendment. Whatever reason there may be for the provision applies also to the amendment; for if a county should not be created until it have the necessary population to entitle it to a member, in order to prevent an undue scrambling for new counties, then existing counties should not be so mutilated in order to make a new county, as to reduce them below that ratio. I trust the Convention will see the propriety of the amendment, and carry out the very proper idea of the committee by adopting it.

Mr. MERRITT—I will only say that the language in the section is the same as in the existing Constitution. It is not supposed that the Legislature would make any such division as to reduce any existing county below its ratio. It is not necessary either. If it was put in, it would be compulsory upon the exact number. It may well be left to the Legislature.

The question was put on the amendment of Mr. Kinney, and it was declared lost, on a division, by a vote of 31 to 50.

Mr. MERWIN—I offer the following amendment Strike out the word "counties" in line two and insert in lieu thereof "single assembly districts." The amendment simply raises the question whether we will elect members from single assembly districts or from counties, and upon that I call the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put on the amendment of Mr. Merwin, and it was lost by the following vote:

Ayes—Messrs. A. F. Allen, Alvord, Archer, Baker, Ballard, Beadle, Beais, Bergen, E. P. Brooks, E. A. Brown, Duganne, Field, Folger, Fowler, Fuller, Fullerton, Graves, Greeley, Hadley, Hitchcock, Hutchins, Ketcham, Krum, A. Lawrence, M. H. Lawrence, Lee, Lowrey, McDonald, Merwin, Prindle, Prosser, Reynolds, Rumsey, Seaver, Stratton, S. Townsend, Van Campen, Wakeman, Wales, Wickham, Williams—43.

Noes—C. L. Allen, Andrews, Axtell, Barker, Barnard, Bickford, Bowen, E. Brooks, W. C. Brown, Burrill, Carpenter, Case, Champlain, Chesebro, Church, Conger, Cooke, Corbett, Corning, Daly, C. C. Dwight, T. W. Dwight, Endress, Evarts, Flagler, Francis, Frank, Garvin, Gould, Gross, Hammond, Hand, Harris, Hitchman, Jarvis, Kernan, Kinney, Landon, Larremore, Law, A. R. Lawrence, Livingston, Loew, Ludington, Merritt, Monell, More, Morris, A. J. Parker, President, Rathbun, Robertson, Rogers, Roy, A. D. Russell, L. W. Russell, Schell, Schoonmaker, Schumaker, Seymour, Sherman, Smith, Spencer, Strong, Van Cott, Weed—64.

Mr. GREELEY—I move to insert in line 5, after the word "year," as follows:

Provided, That any county which shall be

divided into two or more senate districts, shall elect its members of Assembly by said senate districts.

My object is to prevent that enormous aggregation of members in one, where practically one or two men decide who shall be nominated.

The question was put on the amendment of Mr. Greeley, and it was declared lost.

Mr. ENDRESS—I move to strike out the words "one hundred and thirty-nine," and insert "one hundred and sixty." I think, beyond a doubt, the people of this State generally have expected that the number of members of Assembly would be increased. That, I think, was the only subject embraced in the report of this committee that was generally discussed throughout this State before the meeting of this Convention. Wherever I saw it discussed in the public press, or heard it spoken of, I saw there was an expectation that there would be more members of Assembly—a great many more than there had been heretofore. And I think if we desire to make the work of the Convention acceptable and popular throughout the State, we should favor an amendment like the one I have proposed.

Mr. KETCHAM—I will support the amendment of the gentleman if he will make it an odd number.

Mr. ENDRESS—Well, then, make it one hundred and sixty-one—rather more than a less number than I first suggested.

The question was put on the amendment of Mr. Endress, and it was declared lost, on a division, by a vote of 52 to 62.

Mr. MERRITT—There have been a good many votes taken on this section, and I therefore move the previous question.

Mr. RUMSEY—I would ask the gentleman from St. Lawrence [Mr. Merritt] to withdraw his motion for a moment to let me offer an amendment, and then I will renew his motion.

Mr. MERRITT—I withdraw my motion.

Mr. RUMSEY—I move to strike out on the fifth line the words "one year," and insert in place thereof, "two years" so that members of Assembly shall be elected for two years. I offer it for the same purpose that I suggested in the Committee of the Whole, to have biennial sessions of the Legislature. I move the previous question.

The question was then put on the motion for the previous question, and it was declared carried.

Mr. RUMSEY—I call for the ayes and noes on my amendment.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. PROSSER—Do you include in the proposition that one-half of the members shall be elected each year.

Mr. RUMSEY—No, sir.

The SECRETARY proceeded to call the roll on the amendment of Mr. Rumsey, and it was lost by the following vote:

Ayes—Messrs. Alvord, Baker, Barnard, Beals, E. Brooks, E. P. Brooks, W. C. Brown, Burrill, Case, Champlain, Chesebro, Conger, Cooke, Corning, Daly, C. C. Dwight, Field, Fullerton, Greeley, Hutchins, Ketcham, Law, A. Lawrence, M. H. Lawrence, Lowrey, McDonald, Monell, More, Morris, Prosser, Rathbun, Robertson, Rumsey,

A. D. Russell, Schoonmaker, Seymour, Sherman, Van Cott—38.

Noes—Messrs. A. F. Allen, C. L. Allen, Andrews, Archer, Axtell, Ballard, Barker, Beadle, Bergen, Bickford, Bowen, E. A. Brown, Carpenter, Corbett, T. W. Dwight, Endress, Evarts, Folger, Fowler, Frank, Fuller, Garvin, Gould, Graves, Gross, Hadley, Hammond, Hand, Harris, Hitchcock, Hitchman, Jarvis, Kernan, Kinney, Krum, Larremore, Lee, Livingston, Ludington, Masten, Merritt, Merwin, A. J. Parker, President, Prindle, Reynolds, Rogers, Roy, L. W. Russell, Schell, Schumaker, Seaver, Smith, Spencer, Stratton, Strong, S. Townsend, Van Campen, Wakeman, Wales, Wickham, Williams—62.

Mr. VAN CAMPEN—I desire to move a reconsideration of the vote on the proposition of the gentleman from Jefferson, [Mr. Merwin].

The PRESIDENT—The motion is not now in order.

The question was then put on the fourth section as reported by the Committee of the Whole, and it was declared adopted.

Mr. VAN CAMPEN—I now desire to renew my motion to reconsider the vote by which the amendment of the gentleman from Jefferson [Mr. Merwin] was lost.

Objection being made the motion was laid on the table under the rule.

The SECRETARY proceeded to read section 5, as reported by the Committee of the Whole, as follows:

"SEC. 5. The members of the Legislature shall receive for their services an annual salary of one thousand dollars, and ten cents for each mile they shall travel in going to and returning from their place of meeting by the most usual route. The Speaker of the Assembly shall receive an additional compensation equal to one-half of his salary as a member. No Senator or member of the Assembly shall draw his pay until the close of each session, when he shall take his oath or affirmation that he has not received, or agreed to receive, nor does he expect to receive, any money or other property for his official vote or other action, as such Senator or member of the Assembly. If he fails to take such oath or affirmation, he shall forfeit his pay and be ineligible to re-election."

Mr. MERRITT—I wish to make a verbal amendment which will require no vote. After the word "shall" insert the word "respectively."

There being no objection, the amendment was ordered.

Mr. SCHOONMAKER—I move to amend by adding the amendment I offered in the Committee of the Whole.

Mr. HADLEY—I move to amend the amendment by striking out all of the section after the word "dollars," so that it shall then read "members of the Legislature shall receive for their services an annual salary of one thousand dollars," striking out the compensation for travel, and the additional compensation to the speaker, and the remainder of the section.

The PRESIDENT—The amendment of the gentlemen from Seneca [Mr. Hadley] is first in order.

Mr. AXTELL—I hope this amendment will not

prevail. I listened, with a great deal of attention, to the remarks of the gentleman from Ontario [Mr. Folger] on the last clause of this section. I do not understand that the requiring of members of the Legislature to take such an oath as that is a degradation. Every officer in the United States service, at certain periods, whenever he has been promoted, has to take the "iron-clad oath," and that oath does not involve with that officer any idea of degradation. Every person who now takes office in the United States service has to take that oath. If the gentleman from Ontario [Mr. Folger] shall take his seat as Senator of the United States—as I hope he may be compelled to do at some time—he will take that oath and it will be no degradation.

The PRESIDENT announced the question on the amendment of Mr. Hadley.

The ayes and noes were called for, but not a sufficient number seconding the call they were not ordered.

Mr. MERRITT—I ask that the question be divided and the vote taken first on the question as to mileage; second, on the additional compensation to the Speaker; and, third, on the oath of members.

The question was then put on striking out the first subdivision of the section, as follows:

"And ten cents for each mile they shall travel in going to and returning from their place of meeting by the most usual route."

Which was declared lost, on a division, by a vote of 19 to 52.

The question was then put on striking out the second subdivision of the section, as follows:

"The Speaker of the Assembly shall receive an additional compensation equal to one-half of his salary as a member."

Which was declared lost.

The question was then announced on striking out the third subdivision of the section, as follows:

"No Senator or member of the Assembly shall draw his pay until the close of each session, when he shall take his oath or affirmation that he has not received or agreed to receive nor does he expect to receive any money or other property for his official vote or other action as such Senator or member of the Assembly. If he fail to take such oath or affirmation he shall forfeit his pay and be ineligible to re-election."

Mr. L. W. RUSSELL—I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The SECRETARY called the roll on the pending motion to strike out the third subdivision, and it was carried by the following vote:

Ayes—Messrs. A. F. Allen, C. L. Allen, Alvord, Andrews, Archer, Baker, Ballard, Barker, Beadle, Beals, Bergen, Bickford, Bowen, E. Brooks, E. P. Brooks, E. A. Brown, W. C. Brown, Burrill, Carpenter, Case, Champlain, Chesebro, Cooke, Corbett, Daly, C. C. Dwight, T. W. Dwight, Endress, Evarts, Folger, Fowler, Frank, Fuller, Fullerton, Garvin, Gould, Grant, Graves, Gross, Hadley, Hand, Hardenburgh, Harris, Hitchcock, Hitchman, Jarvis, Kernan, Ketcham, Kinney, Krum, Larremore, Law, A. Lawrence, A. R. Lawrence,

Lee, Livingston, Lowrey Ludington, McDonald, Merritt, Merwin, Monell, Morris, President, Prindle, Prosser, Rathbun, Reynolds, Robertson, Rogers, Roy, Rumsey, A. D. Russell, Schell, Schoonmaker, Schumaker, Sherman, Spencer, Stratton, Strong, Van Campen, Van Cott, Wake-man, Wales, Wickham, Williams—86.

Noes—Messrs. Axtell, Conger, Corning, Greeley, Hammond, M. H. Lawrence, Masten, A. J. Parker, L. W. Russell, Seymour, Smith, S. Townsend—12.

The PRESIDENT then announced the question on the amendment of Mr. Schoonmaker, which the Secretary read as follows:

Add to the section:

No member of either branch of the Legislature shall either directly or indirectly demand or receive from any source any other or additional compensation of any character or description than that above provided, for any services rendered by him in relation to any matter before the Legislature, or any of the committees thereof, during the time for which he was elected; and any member who shall either directly or indirectly demand or receive any such other or additional compensation, his seat shall be declared vacant and he shall be deemed guilty of bribery and corruption and punishable therefor.

Mr. VAN CAMPEN—I desire to say that what the gentleman seeks is provided for in the article on suffrage, in the amendment of the gentleman from New York [Mr. Burrill].

Mr. SCHOONMAKER—I call for the ayes and noes on the amendment.

Not a sufficient number seconding the call the ayes and noes were not ordered.

The question was then put on the amendment of Mr. Schoonmaker, and it was declared lost.

Mr. CONGER—I offer the following amendment:

Strike out after the word "services," and insert "a sum not exceeding six dollars a day from the commencement of the session, but such pay shall not exceed six hundred dollars in the aggregate, except in proceedings for impeachment."

Mr. ALVORD—I am entirely opposed to the amendment offered by the gentleman from Rockland [Mr. Conger], because it is going back to a system which has been shown to be very injurious in the past. It is absolutely in effect restricting the term of the Legislature to one hundred days. I prefer to give members a fixed sum and leave the question of the duration of the session to the convenience and judgment of the Legislature. But, sir, in regard to the other matter proposed—that is, the additional pay of the Speaker—I desire to offer as an amendment, to insert "one-quarter" in place of "one-half"—that is, two hundred and fifty dollars instead of five hundred dollars in excess of the pay of members; and I desire to say a very few words on that point. The Speaker should not by any means be permitted to have anything more in the way of compensation than other members. He is the peer of members—nothing more and nothing less; but the position which he occupies, as a matter of necessity, makes it requisite that he should have more expensive apartments than other

members ordinarily have; and my experience is that the increased expense to the Speaker, in an ordinary session of the Legislature, amounts to about two hundred and fifty dollars above the expenses of other members.

Mr. WEED—As I understand it, the Speaker of the Assembly has other duties to perform. He is a member of several boards.

Mr. ALVORD—He is paid for those extra services by a *per diem* allowance, and has been ever since the Constitution of 1846 was adopted.

Mr. WEED—But if I recollect right, this very next sentence prohibits any such payment for extra services. This extra five hundred dollars is in lieu of all such fees.

Mr. ALVORD—Then two hundred and fifty dollars is not enough.

Mr. BARKER—I hope that the extra sum which has been suggested as the compensation of the Speaker will not be diminished. If he is entitled to any sum it certainly ought to be five hundred dollars. Every gentleman who is acquainted with public life knows that the presiding officer has many hospitalities to extend, and they certainly increase his expenses. The gentleman from Onondaga [Mr. Alvord] must have been very sparing in his entertainments as Speaker if it did not cost him more than two hundred and fifty dollars extra. Then the Speaker has other duties to perform, and should receive additional compensation for them. I hope that hereafter the supply bill will not present these items for extra pay for Speakers, Lieutenant-Governors, and other officers.

Mr. BERGEN—I move the previous question.

The question was put on ordering the previous question, and it was declared carried.

The question was then put on the amendment of Mr. Alvord, and it was declared lost.

The question was then announced on the amendment offered by Mr. Conger.

The ayes and noes were called for, but not a sufficient number seconding the call, they were not ordered.

The question was then put on the amendment of Mr. Conger, and it was declared lost.

The question then recurred on section 5 as amended, and it was declared adopted.

Mr. BICKFORD—I move a reconsideration of the vote by which the amendment of the gentleman from St. Lawrence [Mr. L. W. Russell] was stricken out.

Objection being made, the motion was laid over under the rule.

The SECRETARY then proceeded to read the sixth section, as reported by the Committee of the Whole, as follows:

SEC. 6. No member of the Legislature shall be appointed to any civil office within this State by the Governor, the Governor and Senate, or by the Legislature during the time for which he shall have been elected, and all such appointments and all votes given for any such member therefor shall be void. Nor shall any person being a member of Congress or holding any judicial or military office under the United States hold a seat in the Legislature. If any person shall, after his election as a member of the Legislature, be elected to Congress or appointed to any office, civil or

military, under the government of the United States, his acceptance thereof shall vacate his seat.

Mr. A. J. PARKER—I wish to offer an amendment to this section. I propose to strike out all down to and including the word "void," in line five, and insert in lieu thereof the language of our present Constitution, as follows:

"No member of the Legislature shall be appointed to any civil office within this State, or to the Senate of the United States, by the Governor, the Governor and Senate, or from the Legislature, during the time for which he shall have been elected, and all such appointments and all votes given for every such member for any such office or appointment shall be void."

The change that is proposed by the committee would leave the members of the Legislature eligible to the Senate of the United States. It has been prohibited heretofore expressly, under the present Constitution, and so it was supposed to be under the previous Constitution. I prefer, for one, that it should be retained. It is true it has been said that if the Legislature should elect one of its members to the United States Senate, the United States Senate could not deprive him of his seat; but that is not the question. Such an election would nevertheless be unconstitutional. It would be in violation of our State Constitution. No member of the Legislature can vote for any member of the Legislature for Senator without violating his oath, in which he has sworn to support the Constitution of the State. I believe that it is a salutary restriction. It sometimes happens—and it has happened, doubtless, to many of us—that we would prefer some member of the Legislature for the Senate. But I believe that, unless this restriction is retained, the Legislature will always be able to control the matter to that extent, that no one except one of its members can be elected to the United States Senate. To repeal this restriction would introduce into the Legislature intrigues, log-rolling and fraud. The temptation to purchase an election by such means would be great and dangerous, and I hope we shall retain the clause in the Constitution as it has existed for the last twenty years.

Mr. MERRITT—It has been held that the qualifications of a Senator of the United States are prescribed by the Constitution of the United States, and, as I remarked a few days ago, when the subject was up for consideration in Committee of the Whole, there is a difference of opinion as to the validity of such a provision in the Constitution. The fact is well known that, at the election of a Senator of the United States by the last Legislature, the democratic party voted unitedly for a member of the State Senate: and they held that they could legally and properly do so. We thought best, therefore, to omit this from the article, and to leave the question entirely open. No great harm could come of it.

Mr. RATHBUN—This provision now offered by way of amendment has been in the Constitution of the State since 1846. Every delegate on this floor, I presume, will remember that a member of the Legislature was elected a United States Senator, while a member of the Legislature, while serving in the State Senate, notwithstanding

that provision. That was the case of Mr. Talmadge.

A DELEGATE—That was before 1846.

Mr. FOLGER—But it was under a similar provision in the Constitution of 1821.

Mr. RATHBUN—The question was then raised in the Senate as to the validity of his election; but the Senate declared his right to hold his seat, on the ground that under the Constitution of the United States he was qualified for the position for which he was elected. The general judgment of the Legislature last year was that the provision was wholly inoperative, and of no effect. That being so, is it worth while to insert in the Constitution a provision, to be disregarded when the question of the election of a United States Senator shall come up? It seems to me that we had better omit it.

Mr. MASTEN—I hope the amendment of the gentleman from Albany [Mr. A. J. Parker] will not prevail. I suppose that the qualifications of a Senator of the United States are to be determined by the Constitution of the United States, and that only those qualifications which are prescribed by the Constitution of the United States are necessary, and that if this provision was inserted in our Constitution, it would be a nullity. I am opposed to having any provision incorporated in our Constitution, that will conflict with the Constitution of the United States.

Mr. MERRITT—I desire to say that no harm can come from leaving out of the Constitution the existing provision in reference to the election of United States Senators. The election must take place on the second Tuesday after the annual meeting of the Legislature, and no bad results could possibly follow. The fact that a member of the Legislature was a candidate for office would have but very little weight at the commencement of a session, and of course he would vacate his position immediately upon being elected to that office.

Mr. BARKER—I desire to say one word on this subject. A member of the Legislature is the only person disqualified, by any positive provision in our Constitution, from being eligible to the office of United States Senator. It is true that the Constitution of the United States provides the qualifications which must be observed; and one of the reasons of the committee recommending this provision to be stricken out was this, that the Senate of the United States, being the judge of the qualifications of its own members, would disregard the qualifications which are exacted by a State Constitution. Yet, if, in times of high political excitement, they were to exclude a member, they might then fall back upon the provision of a State Constitution, and say that the Legislature of a State had not observed this qualification, prescribed by the Constitution of the State, and thereby exclude a person elected by the Legislature. We wish to have it rest wholly on the rule prescribed by the Constitution of the United States, and then it will be uniform in all the States.

Mr. VAN CAMPEN—I move the previous question.

The question was put on the motion of Mr. Van

Campan for the previous question, and it was declared carried on a division by a vote of 39 to 28.

Mr. HUTCHINS—There was no quorum voted.

The PRESIDENT—There being no quorum voting, the question will again be put on ordering the previous question.

The question was again put, on ordering the previous question, and it was again declared carried by a vote of 48 to 35.

The question was then announced on the amendment offered by Mr. A. J. Parker.

The ayes and noes were called, but not a sufficient number seconding the call, they were not ordered.

The question was put on the amendment of Mr. A. J. Parker, and it was declared lost.

The question was then put on the sixth section, as reported by the Committee of the Whole, and it was declared adopted.

Mr. FULLERTON—I move a reconsideration of the vote by which section 5 was adopted.

Objection being made, the motion was laid over under the rules.

Mr. A. J. PARKER—I wish to move a reconsideration of the last vote taken.

Objection being made, the motion laid over under the rules.

The SECRETARY proceeded to read section 7, as reported by the Committee of the Whole, as follows:

SEC. 7. The elections of Senators and members of Assembly under this Constitution shall be held on the Tuesday succeeding the first Monday in November, unless otherwise directed by law. The first election to be in the year one thousand eight hundred and sixty-eight. The legislative term shall begin on the first day of January, and the Legislature shall every year assemble on the first Tuesday in January, unless a different day be appointed by law. The Senators and members of Assembly who may be in office on the first day of January, one thousand eight hundred and sixty-eight, shall hold their offices until and including the thirty-first day of December of that year, and no longer.

Mr. FULLERTON—I offer the following amendment:

Strike out the word "January" wherever it occurs, and in lieu thereof insert the word "December," and strike out the word "thirty" in line eleven.

We have already agreed, Mr. Chairman, on some provisions which we all hope will aid in promoting one great end we have in view, and that is to prevent corrupt legislation. I believe we may go still further and do something to diminish hasty and ill-advised legislation. The amendment proposed by me looks to this result. When we shall have concluded our labors, I trust we will have agreed upon a provision that will limit the power of the Legislature to legislate on matters purely local in their character. Also, that we will agree that members of the Legislature shall be paid a compensation that will in some degree remove the temptation to accept bribes. And I trust we will have agreed that the legislative year should commence on the 1st of December, and that the Legislature should convene on the first Tuesday of that month. The reasons I

would urge in favor of this change are briefly these: The month of December is one of the dullest in the year to the larger proportion of those who compose the Assembly. It is so with the merchant, the manufacturer, the mechanic and the farmer, and we all know that these classes are always largely represented at least in the lower house of the Legislature. The Legislature now convenes on the first Tuesday of January, and it is proposed to continue that arrangement. The experience of the past shows us that from three to four months is always consumed each year by the legislative session. I fully believe that this period is necessary to secure safe and proper legislation for the State. The difficulty with the Legislature meeting on the first of January is, that as spring approaches, the merchants, manufacturers, mechanics, and farmers of the body become restless and anxious to return to their homes. This is especially true with the farmer. When the first of April arrives it becomes absolutely necessary that all such should go home. Go they must, let the consequences be what they may. Their business demands it, and then begins hasty and ill-advised legislation. Through the process of grinding committees hundreds of bills are passed which are never read, and the contents of which are unknown to very many of the members. I believe this evil may be very much corrected by having the legislative year commence at such a time that the four comparatively dull and idle months of December, January, February and March could be devoted, if required, to the business of legislation. I cannot conceive of a single argument that can be made against this amendment that cannot be met and refuted.

Mr. FOLGER—I understood the amendment of the gentleman from Orange [Mr. Fullerton] to be to strike out the word "January" wherever it occurs, and to insert "December" in place of it. But, "January" stricken out of the ninth line and "December" inserted, would leave a double Legislature for one part of the year. I think the amendment proposed by the gentleman from Orange, ought to be corrected in that respect.

Mr. FULLERTON—I accept the amendment.

Mr. FOLGER—Then, to make the amendment plain, the word "thirty-one" should be stricken out in the eleventh line, and the word "December" in the ninth line, and the words "thirtieth of November" inserted in their place.

Mr. GREELEY—I beg the Convention to remember that this will bring the whole flood of Federal and State documents at once before the people and choke up the newspapers, so much so, that we cannot do anything at all. [Laughter.]

The question was put on the amendment of Mr. Fullerton, and it was declared lost.

The SECRETARY proceeded to read the eighth section, reported by the Committee of the Whole, as follows:

SEC. 8. A majority of each House shall constitute a quorum to do business. Each House shall determine the rules of its own proceedings, and be the judge of the election returns and qualifications of its own members; shall choose its own officers; and the Senate shall choose a temporary resident when the Lieutenant-Governor

shall not attend as president, or shall act as Governor.

Mr. PRINDLE—I offer the following amendment:

Add to the end of section eight the following "The Secretary of State shall call the Assembly to order at the opening of each new Assembly, and preside over it until a presiding officer thereof shall have been elected and shall have taken his seat."

I desire very briefly to explain why I offer this amendment. It is customary now for the clerk of the previous Assembly to preside over the Assembly until a Speaker is elected. But the clerk has no sort of authority to preside, and it is merely by courtesy that he is allowed to do so. It will be recollected that in 1863 a great deal of difficulty was experienced in the election of a Speaker by the Assembly. Some twenty days, or twenty-seven days, as I am informed, were thus occupied, and certainly ten days were occupied after the majority of the members of Assembly desired to proceed to vote, because certain members of the Legislature refused to obey the decision of the clerk, and refused to allow a call of the roll. The ten days were spent in futile attempts to call the roll. Subsequently, during that session, a bill was introduced providing for this difficulty, but the objection was made that it was unconstitutional, because of this section, "that the members of the Assembly are to choose their own officers," and the bill was consequently abandoned, because it was believed to be unconstitutional. Now, it seems to me it would remedy this difficulty by providing that the Secretary of State shall call the Assembly to order and preside until a Speaker is elected. By the law under which we are assembled the Secretary of State called this Convention to order, and presided until a president was elected; and the same plan could be adopted with profit, I think, in the case of the Assembly.

The question was put on the amendment of Mr. Prindle, and it was declared adopted.

Mr. FOLGER—I offer the following amendment. In line 5, after the words "temporary president," insert "to preside." Under the section as it now stands there may be difficulty. A strict construction would seem to require that the Senate could only choose a temporary president when the Lieutenant-Governor was away. The practice has been to choose a temporary president early in the session of the Senate, who presides when the Lieutenant-Governor is away.

The question was put on the amendment of Mr. Folger, and it was declared adopted.

Mr. RUMSEY—I offer the following amendment:

"No member shall be expelled by either house except by a vote of a majority of all the members elected to such house, and no member shall be twice expelled."

The Committee on the Powers and Duties of the Legislature have had this subject under consideration, and they agree with this amendment.

The question was put on the amendment of Mr. Rumsey, and it was declared adopted.

A count was called for.

Mr. C. C. DWIGHT—I would suggest that the gentleman add the words "for the same offense."

Mr. RUMSEY—I accept that suggestion.

Mr. C. C. DWIGHT—It seems to me necessary to attain the object desired to provide further that a member shall not be expelled except for that session. Surely, if a man is expelled at one session of the Legislature, if he goes back again the next session, he should not be expelled again for the same offense.

Mr. GARVIN—He may be turned out by reason of some prejudice and his constituency again return him. The object of this is to provide against expulsion a second time. He may submit the question of his expulsion to his constituency, and if they override the action of the Legislature and return him, although he has been expelled, the Legislature shall not turn around and expel him again for the same offense.

Mr. SEAVER—Is an amendment in order.

The PRESIDENT—The Chair is of opinion that it is.

Mr. SEAVER—It is only a word to make the vote on expulsion to be by a majority of all the members elected or by two-thirds of those present and voting.

The question was put on the amendment of Mr. Seaver and it was declared lost.

The question then recurred on the amendment of Mr. Rumsey and it was declared adopted.

Mr. GREELEY—I move the previous question.

The question was put on the motion for the previous question, and it was declared carried.

The question then recurred on the eighth section as amended and it was declared adopted.

The SECRETARY proceeded to read the ninth section reported by the Committee of the Whole as follows:

SEC. 9. Each house shall keep a journal of its proceedings and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without consent of the other, adjourn for more than two days.

Mr. BARKER—I suggest that there be added at the close of this section the following words: "Nor finally adjourn without the consent of the Governor."

SEVERAL DELEGATES—No, no.

Mr. BARKER—The object of the amendment is this: There is a great probability that this Convention will enact a constitutional provision against the Governor exercising the veto power after the adjournment of the Legislature. Hence the Legislature should not adjourn while a bill is before the Governor, receiving his consideration. It might, perhaps, be well to limit it to ten days after they had signified their readiness to adjourn.

The question was put on the amendment of Mr. Barker, and it was declared lost.

Mr. KETCHAM—I move to strike out the word "two" in the last line, and insert "three" in its place.

The question was put on the amendment of Mr. Ketcham, and it was declared lost.

Mr. GREELEY—I move the previous question.

The question was put on the motion of Mr. Greeley to order the previous question, and it was declared carried.

The question then recurred on section nine, as reported by the Committee of the Whole, and it was declared adopted.

The PRESIDENT—The article, as adopted, will be referred to the Select Committee on Revision.

Mr. BALLARD—I move that we now adjourn. The question was put on the motion of Mr. Ballard, and it was declared carried.

So the Convention adjourned.

FRIDAY, August 9, 1867.

The Convention met at 10 o'clock A. M.

Prayer was offered by Rev. G. C. WELLS.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. STRONG—I understand I am recorded on the Journal of yesterday as having voted in favor of striking out the provision requiring members of the Legislature to take an oath before they receive their pay, whether or not they had received any money for bribery. I must have misapprehended the nature of the motion before the Convention, as I was decidedly in favor of the original proposition. I wish some memorandum may be made of it, so that I will stand corrected on the Journal of the Convention.

The PRESIDENT—The Journal will be corrected as requested.

Mr. STRATTON presented the petition of eighty citizens of New York in relation to the traffic in wines and liquors.

Which was referred to the Committee on Adulterated Liquors.

Mr. STRATTON also presented six several petitions from the following societies:

Herman Society, eighty-five members; Arion Society, four hundred and twenty members; Euphonia Society, ninety-five members; New York Carvers' Association, three hundred and ten members; Washington Rifles, sixty members; New York Merchants, one hundred and twenty-two members, on the same subject.

Which took the same reference.

Mr. DALY presented the petition of John M. Stearns on the same subject.

Which took the same reference.

Mr. COCHRAN presented the petition of F. J. Sheffield and seventeen others, citizens of the State, asking for a constitutional provision prohibiting the sale of intoxicating liquors.

Which was referred to the Committee on Adulterated Liquors.

Mr. CONGER presented the petition of Martin Luther Bergen and ten others, citizens of Fishkill, on the same subject.

Which took the same reference.

Mr. FOLGER presented the petition of A. B. Lawrence and others on the same subject.

Which took the same reference.

The PRESIDENT presented a communication from the State Engineer and Surveyor, in answer to a resolution of the Convention.

Which was referred to the Committee on Canals and ordered to be printed.

Mr. ALVORD—I give notice that I will move to reconsider the vote ordering the expunging from the Journal of the proceedings of this Convention, so much as relates to the question on the call of the Convention at the evening session of Monday.

Which was laid on the table.

Mr. MASTEN offered the following resolution:

Resolved, That the sergeant-at-arms deposit in the box of each member in the post-office of this Convention four copies of all documents and reports printed by this Convention.

Mr. MASTEN—The object of this resolution, Mr. President, is to furnish each of us with a few extra copies. It is necessary that we should have for our own individual use more than another copy besides the one that is placed upon our files. These reports require an examination, and each member should have a copy that he may take with him to his room and examine, and each member, it seems to me, should also be furnished with at least one or two additional copies, that he may send them to the leading paper in his own district.

Mr. FOLGER—I rise to move that this resolution be referred to the Committee on Printing.

Mr. SHERMAN—I do not see any objection to the adoption of this resolution, provided the number is made three instead of four. This does not provide for printing any additional number; it simply provides for a division of those on hand equitably among the members.

Mr. CONGER—Why does the gentleman object to four copies? Four times 160 only makes 640.

Mr. SHERMAN—Simply because it will not leave a sufficient number to put on the files and to bind, as provided for by the rule.

Mr. FOLGER—My reason for moving the reference of this resolution to the Committee on Printing was that the number of four could not be supplied out of 800, which is the usual number, after making the division provided for by law. Perhaps the Committee on Printing, however, will devise some plan.

Mr. MASTEN—I will accept the amendment of the gentleman from Oneida [Mr. Sherman].

Mr. FOLGER—I wish to inquire of the gentleman from Oneida [Mr. Sherman] whether we can have three copies. As I understand it, eight hundred is the usual number. Three hundred and twenty-one must be bound, which leaves but four hundred and seventy-nine. There are exhausted, by putting on the files of members, officers and reporters, about two hundred; that leaves but two hundred and seventy-nine. Now, I do not see how you can get three times one hundred and sixty out of that, or even twice one hundred and sixty.

The question was put on the motion of Mr. Folger, and it was declared carried.

Mr. RUMSEY—I move to reconsider the vote by which the biennial election of members of the Legislature was rejected last night, and ask that this motion do lie on the table.

The PRESIDENT—There being no objection, that motion will be entertained, and the motion to reconsider will lie on the table.

Mr. ANDREWS—I desire to ask leave of absence for Mr. Rathbun, until Tuesday morning. There being no objection, leave was granted.

Mr. GREELEY offered the following resolution:

The SECRETARY proceeded to read the resolution:

Resolved, That the roll of the Convention be called each day, directly after the reading of the Journal, and every member who shall appear to be absent without leave, shall thereupon be fined six dollars, to be deducted by the Comptroller in paying his compensation.

Mr. SPENCER—I offer the following amendment as a substitute:

Resolved, That a committee of five be appointed to examine and report whether the Convention have the power by any general rule or resolution, to impose a forfeiture of pay or other penalty as a punishment for non-attendance on the duties of the Convention by any member thereof.

Mr. GREELEY—I must protest against the terms of this substitute. We do not propose to impose anything on members. We simply say that if they neglect their duties they shall not by certificate of the officer of this Convention, be paid for services they do not render. I will assume that no member of this Convention desires to be so paid. I do not believe gentlemen whom I have seen going off to the Springs desire to be paid for the time which they feel required to give to their private business or their private pleasure. I simply desire that the account of this Convention shall be honestly made up. I desire to be absent—I must be absent some, and I do not desire to be paid, nor do I believe I ought to be paid for the time I devote to private business. I wish to be so absent without breaking up a quorum, and I believe my resolution, if passed, will give us a quorum. I think the substitute of the gentleman from Steuben [Mr. Spencer] assumes facts that are not facts.

Mr. ALVORD—I am of the opinion that the gentleman from Westchester [Mr. Greeley] is wrong in his assumption that we can, by any order given by this Convention, instruct the Comptroller to withhold any payment from any member of the Convention. I desire to offer the following amendment to this proposition, which seems to me is all that ought to be asked, and with which we should be content.

The SECRETARY proceeded to read the amendment, as follows:

Amend by striking out all after the word "Journal," and inserting in lieu thereof the following: "and that the names of the absentees be spread upon the Journal, and when absent with leave the Journal shall so state."

Mr. CONGER—I should have no objection to the proposition made by the gentleman from Onondaga [Mr. Alvord] with the further provision, which is undisputably just and necessary. That any member appearing in the Convention after his name has been called may have his name entered as being present. The operation of the rule proposed by the gentleman from Onondaga [Mr. Alvord] would make a man, by the minutes of the Convention, absent when he came to his seat one-half second after the roll was called—

there would be a final entrance on the minutes, although he might be present and participate in all the important action of the Convention during the day, that he was absent throughout the whole day. There is no such practice as this adopted by any parliamentary body upon a call of the roll, to ascertain whether members are diligently in their attendance, but they have permission to have their names entered as being present if absent at the call of the roll; that privilege is always accorded to them. It is a matter of courtesy as well as right, and the attempt to shut a man out from that right seems to me to be almost equal to the school-boy days of my honorable friend from Onondaga [Mr. Alvord].

Mr. BOWEN—I simply wish to inquire whether the gentleman proposing those resolutions intend to exclude any other fine, penalty, or other punishment? If it does, I fear it will be the cause of members vacating their seats here, and it appears to me that would be the effect of the resolution.

Mr. GREELEY—The resolution is perfectly plain. It does not contemplate any more than stated therein, and it has nothing to do with the right of the Convention, by other means to require members to be present. It simply contemplates a little honesty on the part of the members of this Convention, and I trust it does not contemplate too much.

Mr. SPENCER—The proposition of the gentleman from Onondaga [Mr. Alvord] was a day or two since voted down upon the suggestion that it was the province of any member of the Convention to move for a call of the roll at any time.

Mr. SCHOONMAKER—I move to lay the subject on the table.

The question was put on the motion of Mr. Schoonmaker, and it was declared carried.

Mr. SEAVER offered the following resolution:

Resolved, That all propositions for the alteration of the standing rules or the addition of new rules, pending or hereafter to be offered, be referred to the standing Committee on Rules for their consideration before final action by the Convention, and that the committee be directed to properly incorporate in its place the provisions of the amendment to the twenty-ninth rule, relating to the previous question, adopted yesterday.

The question was put on the resolution of Mr. Seaver, and it was declared adopted.

Mr. VAN CAMPEN—I desire to ask leave of absence for next week and until Monday evening after. The Indians of my county and adjoining thereto desire to have a council next week, and are anxious to have me present two days at that council. It will therefore require my absence all next week, and as I cannot get here without starting on Friday I desire to be excused until Monday night, August 19.

There being no objection, leave was granted. Mr. KERNAN—I ask leave of absence during Monday evening next.

There being no objection, leave was granted. Mr. L. W. RUSSELL—I ask leave of absence for Monday evening and Tuesday next.

There being no objection, leave was granted. Mr. ARCHER—I ask leave of absence for Mr.

Ballard, of Cortland, until Tuesday morning. He was called away last evening by a telegram after the session was closed.

There being no objection leave was granted.

Mr. GROSS — I ask leave of absence for next week, on account of ill health.

There being no objection, leave was granted.

Mr. STRATTON — I ask leave of absence for Mr. Rogers until Wednesday next, on account of illness in his family.

There being no objection, leave was granted.

Mr. PRINDLE — I ask leave of absence for next week.

There being no objection, leave was granted.

Mr. HAMMOND — I ask leave of absence for next week, on account of illness in my family.

There being no objection, leave was granted.

Mr. LARREMORE — I ask leave of absence for Monday evening.

There being no objection, leave was granted.

Mr. FLAGLER — I ask leave of absence for Monday evening and Tuesday next.

There being no objection, leave was granted.

Mr. SEAVER — I do not know that I really shall want it, but fearing that I might, I ask leave of absence until Wednesday next.

There being no objection, leave was granted.

Mr. MASTEN — I ask leave of absence for Monday evening. I have a special term of court to hold.

There being no objection, leave was granted.

Mr. BOWEN — I ask leave of absence until Tuesday morning.

There being no objection, leave was granted.

Mr. BERGEN — I ask leave of absence until Tuesday morning.

There being no objection, leave was granted.

Mr. HITCHMAN — I ask leave of absence until Tuesday morning.

There being no objection, leave was granted.

Mr. T. W. DWIGHT — I ask leave of absence until Tuesday morning.

There being no objection, leave was granted.

Mr. FARNUM — I ask leave of absence until Tuesday next.

There being no objection, leave was granted.

Mr. ALVORD — Would it be in order for me to inquire whether we will have a quorum present on Monday evening, after granting the leaves of absence?

The PRESIDENT — The Secretary informs the Chair that only twenty-three or twenty-four have been granted so far.

Mr. SCHALL — I ask leave of absence until Wednesday morning. I have an engagement in New York.

There being no objection, leave was granted.

Mr. VAN COTT — I ask leave of absence for Tuesday and the morning session of Wednesday.

There being no objection, leave was granted.

The Convention resolved itself into Committee of the Whole on the report of the Committee on the Governor and Lieutenant-Governor, etc., Mr. KERNAN, of Oneida, in the chair.

The SECRETARY proceeded to read the first section, as follows:

SECTION 1. The executive power shall be vested in a Governor, who shall hold his office for two

years; a Lieutenant-Governor shall be chosen at the same time and for the same term.

Mr. C. L. ALLEN — As I had the honor of submitting this report, perhaps it is incumbent upon me to state to the Convention, concisely as I can, some of the reasons which operated on the committee in making the report it did. I am happy to be able to state that the committee, after mature deliberation, were unanimous in the conclusion to which they arrived, as stated in the report of the committee. It is as follows:

"They prefer to use language, as far as practicable, which has been settled and approved by long and well-established usage and judicial construction, rather than to adopt a new and unsettled phraseology which would not be so well calculated to secure the continued existence of provisions which they have unanimously approved."

In the first place, as to the term of office of the Governor. We did not believe that any change was demanded by the people in that particular. Suggestions were made to the committee to consider the propriety of shortening the term of that officer to one year. The committee were not of that opinion. By the Constitution of 1777 the term of office of the Governor was fixed at three years. This continued, of course, down to 1821; when, after a spirited and learned debate in the Convention of that year, in which such men as James Hunt, Ambrose Spencer, Martin Van Buren, Abraham Van Ruyter, Erastus Root, Samuel Young, Elisha Williams, Peter W. Livingston, and a host of other worthies of that day, participated, it was altered and fixed at two years. Many of the delegates were in favor of the shorter period of one year, and among them was the celebrated Erastus Root, who, for a long period of time, was a distinguished light among the able politicians of his day, and to his aid came Peter W. Livingston. On the one hand it was urged that the Governor should be more immediately under the control of the people, in order that they might be insured against the improper execution of the trust committed to him; and that if he executed the duties promptly and with ability, he would be re-elected. That if a bad man succeeded him, he would be fastened on the community for a long period, and could not well be got rid of; but if he was settled with oftener and made accountable to the people annually, he would be more likely to discharge his duties with fidelity. The check was in the virtue and morality of the people. "A corrupt people would not choose a virtuous Governor; nor a moral people a vicious one." On the other hand it was urged by such men as Mr. Van Buren and his associates, that a one year term would cause too frequent excitement and agitation in the community; that in a territory so widely extended as New York, biennial elections would excite sufficient agitation without too many additions to rouse the feeling which would unavoidably prevail; that one year would not enable a Governor to carry out any plans of great public benefit; that no man of ability would willingly put himself in a position which would be liable to be so shortly disposed of. It was said, that it was necessary that the Governor's power should exist long enough to survive that temporary

excitement which a measure of great public importance must occasion, and also to enable the people to detect the fallacy under which the acts of the government might be veiled, as to their real motives. It was asked, "Can a fair judgment of the motives, or of the effect of measures, be made in a few months or a year?" Surely not, and a term of three years would even be sometimes necessary, to enable the people fairly to judge of the effect of many measures. But it was argued that extremes must not be resorted to, and jealousies would be aroused on the part of the people, by weakening the responsibility to them of their public officers. These and various other reasons, not necessary to detail, operated upon the minds of the framers of the Constitution of 1821, and they adopted the term of two years. This was again confirmed by the action of the Convention of 1846, and has thus continued to the present time. After due reflection, the committee have concluded not to recommend an extension of the term in the proposed new Constitution. If they had deemed it advisable they certainly would have recommended an increase, instead of a decrease, in the term of office. Our State has vastly increased in point of consequence, wealth and resources since the days of the Constitutions referred to. With a population of 4,000,000, and rapidly increasing, its wants and interests need the most careful exercise and vigilance of executive power and influence. The single clause that the Governor must take care that the laws are faithfully executed, is of itself of the utmost importance. In order to discharge this duty correctly, the incumbent must be well acquainted with the laws of the State and the various and almost innumerable statutes bearing upon his duties. He is to communicate to the Legislature at every session the condition of the State, and recommend such measures to them as he shall judge expedient. He shall transact all necessary business with the officers of Government, civil and military. He shall expedite all such measures as may be resolved upon by the Legislature, and shall take care that the laws are faithfully executed." He is to correspond with the general government and the government of the several States. He must be well acquainted with our criminal code. His duties, in short, are numerous and complicated, requiring the utmost sagacity, care and vigilance. Men competent for this station are not to be found in every place, and when selected they would not be likely to accept the office if limited to a single year, and hardly for two years, and the office might be brought into disrepute if the term was too short. Again, time for the calming down of excitement and prejudice would afford the people an opportunity of judging dispassionately. Experience, too, is of the greatest importance in discharging with ability and success the duties of the office. You elect your Senators for two years, and by the motion adopted yesterday for four years. You elect your judges for a period of eight years and four years, and why?

Because you deem experience to be of the greatest importance. In short, every reason points to an increase, instead of a lessening of the term. Were it not for the belief that a change is not demanded, and is perhaps not expected, the committee would have deemed it advisable to have extended the term to three or four years, as most conducive to the best interests and welfare of the State. As to the Lieutenant-Governor, it was suggested to us by a few members of the Convention, to consider the propriety of abolishing that office, and devolving its duties upon the President of the Senate. A few of the States have such a provision in their Constitution, but they are mostly of the smaller States in point of territory and population. In most of the States that officer is retained. With us it was thought advisable not to make an alteration in that particular. The Governor is elected by the whole people, and represents and takes care of the interests of the whole State; so should the Lieutenant-Governor, who, in case of the resignation or death of the Governor, is to fill his place and discharge his duties. The President of the Senate is a Senator elected by a district, and represents the immediate interests of his own constituency, who would be deprived of their representative for the time being, when he acted as Lieutenant-Governor. In such capacity he would not be a State officer elected by the whole people, and not a proper representative of their interests. It is true, in case of the occurrence of the unusual and improbable contingency of a vacancy occasioned by the death or disability of both Governor and Lieutenant-Governor, he would then act as Governor; but this would only arise under the absolute necessity of such a peculiar case, which has never yet, I believe, occurred. So much for the first section. The second section, which is also copied from the Constitution of 1846, I pass over as needing no comment. It has, I believe, met with universal approbation, and needs no observation. So likewise with the third section; it needs no comment or explanation. The fourth section is like the present Constitution, with but few amendments, and I will ask the attention of the committee for a short time to it. We recommend that the compensation of the Governor be first fixed by the Legislature at its first session after the adoption of the proposed Constitution. The reasons for this provision, I believe, are sufficiently stated in the brief preface which the committee have appended to their report. They have said there as follows: "While your committee are fully of the opinion that the present compensation is far less than the Chief Magistrate of the Empire State should be entitled to receive, they believe it not wise or expedient to name or determine its amount in the Constitution, but have proposed that it be first fixed by the Legislature at its first session after the adoption of this Constitution, in order that it may not be subject to the caprices and temptations of legislative enactment after the election of the successful candidate or during his continuance in office." No one will be likely under these circumstances to seek the office in reference to the salary, nor can any individual be corruptly or designedly approached by reason of its proposed increase, in

order to obtain the sanction of the Executive in favor of any improper or odious measures, for a reward to be given by an increased salary. The committee did not deem it expedient to name or determine the amount of the salary in this section, as the currency, particularly at the present period, is so constantly and greatly fluctuating. It would, in many respects, have been unwise to do so. We were finally of opinion that it was most advisable to leave the sum to the wisdom and discretion of the Legislature. We have ventured the remark, however, that the present compensation is far less than the Chief Magistrate of the Empire State should be entitled to receive, in the hope and belief that it would carry with it the weight of the Convention and perhaps exert a favorable influence on the future deliberations of that body on this important subject. It is well known, indeed universally conceded, that the present salary does not approach to a payment of the expenses of the Executive. It is not honorable to the great State of New York, nor, it is believed, gratifying to the pride of her people, that her Governor shall be obliged to defray, in a great measure, his own expenses. No one but a wealthy citizen can afford to assume the high and responsible duties of her chief magistracy; and it is not commendable to our public reputation or standing that this current and standing reproach should be continued and constantly thrown upon us—that we do not support our Governor. In the war of 1812, while our State was under the direction of Daniel D. Tompkins as Governor, it is well known that he expended a fortune in defraying the expenses of his office. I recur to a more recent instance, of the late lamented Silas Wright; who was obliged to trench upon his own purse—not very well filled, unfortunately for him and his family—in supporting that dignity of station and respectability of office which I believe he ever sustained. I am proud, as a citizen of this State, to recur to the manner in which the dignity of that office was sustained by him. We should make all due haste to remedy the evil and right the wrong. Our population is more than the whole number of the United States at the organization of the general government. The President at the time was entitled to \$25,000. There are many presidents of corporations, where their duties are small and not at all as onerous as the duties of the Executive of our State, and instances are not rare where they receive salaries of ten and fifteen thousand dollars a year, while our own Executive, burdened with services the great duty of sustaining himself as Governor of the great State of New York, is left with a pittance which is almost nameless. But enough on this subject. I have put forth these remarks, not, perhaps, as exactly applicable, except so far as to express the sense of the Convention, and to express their belief that the Legislature will take ample care of a matter so important. The fifth section of the present Constitution relates to the pardoning power, which has been referred to another committee, and, though somewhat connected with the matters referred to us, we have not thought it advisable to treat of it in our report. That committee will un-

doubtedly favor us with a report doing ample justice to that subject. The sixth section, which is the fifth in our report, relates to impeachment, and describes the powers and duties of the Governor and Lieutenant-Governor. We come now to the section fixing the compensation of the Lieutenant-Governor. This we have recommended should be determined in the same manner as that of the Governor, and we have added the clause, that he shall be entitled to receive no other or further fees or compensation. Under the present law he receives as Lieutenant-Governor six dollars per day and mileage, while acting in that capacity. He is, however, by virtue of his office,

1. A commissioner of the canal fund.
2. A member of the canal board.
3. A commissioner of the land office, and custodian of the old State hall.
4. Trustee of the State capitol.
5. Trustee of the new State hall.

For all the services which he performs in these several departments, it has been deemed that he is entitled to receive a per diem allowance and traveling fees, and it has been the practice for him to charge and receive these several allowances. Under these circumstances, it has been one of the best paying offices in the State, and has amounted to a sum far exceeding the compensation of the Governor, without incurring the great expenses necessarily charged upon that officer. In the case of one incumbent of that office, the records show that he received a compensation not far short, if not exceeding \$10,000, in a single year, and yet it was deemed advisable to pay the charges, inasmuch as he was constructively entitled to them. This, it is believed, was never the intention of the Legislature, and yet as the per diem as Lieutenant-Governor was only placed at six dollars per day, it was perhaps thought that he would receive something in addition to that sum, as payment for the discharge of his duties in other relations to the government. This should not be—a fair, full and ample compensation should be fixed by law, beyond which he should not be remunerated, nor should he be left to the calculation of constructive mileage and per diem allowance, in so many different phases. It is hoped that the Convention, and the people through it, will correct the evil. I have now reached the last section of the article which we propose, and that in many respects is perhaps the most important one of any that we have proposed to amend. It is that in relation to the veto power. It may have been supposed that this branch belonged to another committee, who are to define specifically the powers and duties of the Legislature. We, however, concluded that it was a part of the duty assigned to us, and we were strengthened moreover in that conviction when we were presented with two different resolutions on this subject, referred to our committee for consideration, and on which we were instructed to report. As we remark in our report, "this amendment your committee believe that they cannot recommend too strongly to the favor of the Convention. It is unnecessary to enter into details of the reasons for its expediency or propriety. They will readily commend them-

selves to the minds of the Convention. The requirement will not only serve as a more sure protection against all fraud and corruption which may be attempted on the part of those interested in the passage of the bills, but will no doubt greatly relieve the Executive from ceaseless and incessant importunities and temptations, to which the unscrupulous and designing are ever ready to resort." Again, sir, they say, "By the existing Constitution no bill can be passed unless by the assent of a majority of all the members elected to each House; and yet, if the Governor shall object, each House, on a reconsideration, may approve of such bills, by a vote of two-thirds of all the members present." Thus, for instance, the objections of the Governor may go back to the Senate, and seventeen of that body constitute a quorum for the consideration of bills which are objected to by the Governor. Two-thirds of that quorum—less than a majority of all which will be required to pass a bill originally—may override the Governor's veto, and send the bill to the House for concurrence. We supposed, in the first instance, that the Convention of 1846 had overlooked this inconsistency, and that it had inadvertently been suffered to remain in the Constitution, but on looking at the debates and proceedings of the Convention, we find that it was the subject of much discussion. While all intention to destroy the veto power was denied, and it was conceded that it should be retained to prevent ill-considered and hasty legislation, it was thought advisable to permit the Legislature to override it, after receiving the objections, by a two-thirds vote of those present. Yet the majority differed from the views of the minority, and it was finally adopted as it exists now in the present Constitution, thus leaving the inconsistency which I have endeavored to expose, to prevail as it now does. I believe the amendment that requires a vote of two-thirds of all the members elected to each House ought to prevail, and I trust it will prevail in the minds of this committee. If ever it was necessary as a safeguard, it surely is at the present day. It has been remarked that there has been corruption; it has been frequently remarked upon the floor of this Convention, during its sittings, and I sincerely believe such is the prevailing opinion throughout the length and breadth of this State, that there is corruption, that there has been corruption, among our public officials and members of the Legislature of the State. Is there not great reason for entertaining such a belief? "By their fruits ye shall know them" is an old sentence which commends itself to us all and which has been approved ever since it was uttered by Him who spake as never man spake. Look at our mammoth and huge corporations at the present day, which can expend any amount of money to secure the passage of bills. Gentlemen on the floor very gravely and seriously, when they have been talking about these charges of corruption, ask for the evidence. Why, the evidence exists, sir, in such a manner that he who runs may read. Do the gentlemen who ask these questions ask any proof from me upon this subject. It is a subject on which I do not willingly enter. It is an unpleasant matter to me, but at the same time the conviction is

forced upon my mind that the idea which prevails among the people is true. In a conversation that I had not many years since with a member of the House of Assembly, representing one of our first counties, he gave me a piece of information which I will impart for the benefit of two or three gentlemen who ask these questions. I inquired of him how it was possible that the minds of men who are known to be opposed to bills on their passage before his body had become suddenly converted. He said: "It is a matter of almost every day occurrence. There is one case within my own knowledge where a member was approached by a person interested in the passage of a bill, in these words: 'Now, here I am, very anxious to secure the passage of this bill by the Legislature. It is a matter of minor importance and personal interest. It is a matter in which the interests of the State are not very deeply concerned, and I should like very much to have your vote in favor of its passage. There certainly can be no harm. You will not affect the interests of your constituency at all, or those of the State. I should be very much pleased if the passage of the bill could be effected.' Nothing more was said, but the next morning very mysteriously that member found in his post-office box an envelope, inside of which was a one hundred dollar greenback, without a word of explanation upon the subject. Nothing was said whence it came, or for what purpose it was intended. But, said my informant, the mind of that individual became suddenly converted, and in two or three days, when the bill came up for the third reading, he voted for its passage. I said, 'Why was not that man exposed?' He said that the member informed him of the fact of his having received the one hundred dollars, and asked him for advice as to what he should do upon the subject, and that he advised him to bring it to the attention of the Speaker of the House, in his place, the next morning. The gentleman thought it was not advisable to do so, but that he would have the privilege of sending it to a religious institution. It was accordingly so done, and the gentleman's conscience, if it was affected at all, was salved over by the remedy which he provided. If the gentlemen want another instance I will give one more without delaying the committee too long. It was asked during the last session of the Legislature how a certain Senator was as to his integrity and morality, and whether it was believed that by tying \$5,000 over his eyes, it would enable him to see more openly the propriety of overriding the Governor's veto to a certain railroad bill. The question was asked; said my informant, 'I told him he must answer his own questions.' Whether the attempt was made or not I am unable to determine. One gentleman remarked yesterday that in case these great corruptions were going on, why should not the Governor prorogue the Legislature as was done during the session of 1812, and when the enormous frauds elicited on that occasion, certainly entitled the Governor to use that power. Why, does not my friend remember, or had it escaped him that by the Constitution of 1777 the Governor had the power to prorogue the Legislature for a period not exceeding the term of sixty days; that

Daniel D. Tompkins, by virtue of the power given by the Constitution of 1777, prorogued that corrupt Legislature, and for which he has been thanked a great many times. By the Constitution of 1821 that power was withheld from the Governor, and again by the Constitution of 1846 it was withheld from him, and he has no power to prorogue the Legislature. You have got to protect this power in some other way—by this veto power which the committee recommend. Now, sir, the propriety and safety of this veto power was demonstrated during the last session of the Legislature. Look at the pile of bills that were on the tables of our members during the last year. But for the timely interposition of the Governor's veto the people of the State of New York to-day would have been living under a State tax of more than ten mills on the dollar, while even now it will exceed the sum of seven mills. We should look to it to see that the interests of our State are protected; that our own individual interests are protected, and protected by the timely exercise of this power. But, sir, it is not this alone. The alarming state of public morals at the present day calls upon us to guard well this veto power. We need but to take up the papers of the day to read evidences of the declension of public morals. The standard of public morality has long been trailing in the dust. Officers in high stations of trust and responsibility are continually proving criminals, and destroying the confidence and property of thousands and thousands of those who have placed confidence in them, and deposited their little all for safe keeping, in their hands, and many a widow and orphan has been reduced to poverty in the last ten years who had a competency which would have taken care of them for life and solaced their declining years to the grave, and have been cast upon the cold charities of a heartless world for the bread necessary for their support. I am no alarmist or prophet of evil, but I may be permitted to remark that if as a nation or a people we are to pursue the same downward course which has characterized us for the last ten years, we shall approach the fate which befel the republics which have preceded us. Let us endeavor to profit by past experience and by the lessons of history. Let us endeavor to guard well our public and private institutions and our public morality. Let us do what we can to stem the tide which is rushing upon us with a velocity calculated to endanger and destroy us as a people. Let us preserve this safeguard against the corruption of inconsiderate and unprincipled legislation. Let us stay it by every means in our power. I came here, sir, as a member of this body for that purpose; and came here to do what I might, in connection with those with whom I act, to correct the evils which prevail in our State. As regards myself, sir, and some other members of this Convention, we have passed the meridian of life; we have no aspirations but to do our duty for the benefit of those who come after us. For myself I feel as if the few declining years that are left to me should be devoted not to myself, not for myself, nor for my own interests, but for the interest of posterity. It is for that reason I came here as a member of this body, resolved to

rise above all partisan considerations and above all party feelings, and do what I might in unison and in connection with my brethren to make a Constitution which shall redound to the benefit and good of the whole people. Let us, then, so act in reference to the provisions which we will adopt as will enable us to reflect and say that we are not ashamed to have been a member of the Convention of 1867.

MR. S. TOWNSEND—The suggestion of the committee in favor of proposing to give more strength to the veto power, is an admirable one. I wish the committee had gone further, and instead of saying two-thirds, had required three-fourths of the members elected to pass a bill over the Governor's veto.

A DELEGATE—The gentleman from Queens [Mr. S. Townsend] is referring to a subject embraced on the eighth section—not the one under consideration.

MR. S. TOWNSEND—I shall speak of the first section. The committee will remember that the Convention yesterday agreed, by a very considerable majority, to extend the term of office for State Senators to four years. We have an analogy then in the term of office of United States Senators being six years, and the chief executive office of the United States being four years. I would amend this first section by inserting in lieu of the words "two years" the words "three years," so that the term of office of the Governor shall be three years. There is no occasion to dilate upon the reasons why the principle of a farther extension of the time of service would add to the importance of the office. Yet, if the propriety of devolving upon local boards of county, town and city officers is not adopted under the action of some appropriate committee, I should then favor a shorter term than four years for Senators, and I should also favor a two years' service for Governor. It would be better that the election of Governor, and the election of Senator, should take place at different times, and for periods of office. This idea of separating in as many distinct questions and different issues as possible, is a favorite one to my mind, and one that I have attempted often to sustain. With reference to the difficulty of the submission of various points, I think we should endeavor to thus prepare and submit them to the consideration of our constituents. A gentleman stated on this floor that in another State (Massachusetts) nine separate propositions were thus presented. What was valuable in them we could succeed in preserving. From the first day of October to the November election would give ample time for the electors of intelligence in the State of New York, who I believe are daily advancing in their knowledge and fitness to discuss and decide questions of large importance. We have the advantage of education, the dissemination of knowledge, the electric telegraph, and above all the newspaper press, affording the means for much more than usual opportunity for reflection and consideration on the part of our constituency than has ever before existed in our State. I say that I should be willing, even if we rise from our deliberations, having succeeded with fifteen different propositions as the result of our labors, if we adjourn at

an early period to submit as many distinct propositions as the people as we can. In that idea, with a view of separating the election of the Governor, we may safely and properly put the term of Senators at four years. I think that for Governor it may be properly expanded to three years, on the grounds I have stated, and the particular point I am endeavoring to elucidate is, that the election of Governor shall take place on a different year from that of Senator.

Mr. KETCHAM—I offer the following amendment.

In line 2 strike out the word "two" and insert "four," and after the word "years" in line 2, insert "but shall not be eligible for re-election for the next term."

We all know, Mr. Chairman, that at the present time, the term of office of the Governor is practically four years. The first two years of a Governor's incumbency in office is almost always used to a very considerable extent in devising the means to secure a re-election. Appointments are made, bills are signed, and the sanction to bills withheld, with a view to secure a return for a second term. I submit that we may just as well and better provide that in effect and without the necessity for this effort on the part of the incumbent the first two years, that the term of office for Governor shall be four years, so that he may spend the whole of his time, instead of the last two years, in making up a good record for himself in the future, instead of having the first two years with a view of securing a re-election. Then the prohibition against his re-election still further removes him from any temptation to occupy any portion of the time to that purpose. Under this provision an election will take place next year at the same time with the election of the Federal executive. You will thus have our Governors elected each time when there is a presidential election, and a time when all the voters are much more likely to be got to the polls, when there is a better and a fuller expression of the will of the people. If the record for the first four years is a good one, and it is desirable that the Governor shall secure a re-election, having had the experience of the first term, he may be taken up if the people so choose. It strikes me, for these reasons, that it will be much better to have the term extended for four years, than to have it as now, but two.

Mr. A. J. PARKER—As a member of this committee I wish to say, in answer to what has been said, in regard to this subject, that this provision in regard to a two years' term of office, as well as all the other provisions in this report, were unanimously agreed upon by the committee after a very careful consideration of the subject, and after a full discussion. Now, I think the gentleman who has last spoken, does great injustice to the distinguished men who have filled the gubernatorial chair under the present Constitution, when he says the first two years have been devoted to securing a re-election.

Mr. KETCHAM—In part—I said.

Mr. A. J. PARKER—I don't think they have, at all. In the first place, but half the gentlemen

have served the second term. I believe the first two years as well as the next two they have filled the Executive Chair, have been devoted in all cases to the making of a good record of the faithful discharge of public duty, and to so place themselves before the people, that their acts should be approved, and not with reference to re-election, not with reference to any other office to which they may aspire, but for the benefit of their constituency. I do not believe, myself, in extending this term beyond two years. Nor do I believe in declaring the incumbent in office ineligible for the next two years. I believe in a return to the people for their approbation as often as once in two years. I don't believe in saying that the experience that has been gained the State during two years shall be lost necessarily by putting aside the incumbent for another person. There is a difficulty, I admit; something may be said on both sides of the question, some may desire to reduce the term to one year; some may desire to extend it to three. But I ask, has there been any call on the part of the people for any change in this term of office? Are not all satisfied with the incumbency of two years, and with the privilege of being again a candidate for a place before the people? I do not believe, Mr. Chairman, that we should make changes here in matters of this kind that have not been called for by the public, and I am not aware of any dissatisfaction in any portion of the State with the incumbency of a term of two years. I believe it is safer, and so thought our committee; and I trust this committee will retain this Constitution as it is, with regard to the term, and with regard to future eligibility.

Mr. GREELEY—I believe the experience of free and elective institutions all over the world tends to the establishment of this conviction—that an officer wielding great patronage and power ought not to be eligible to re-election while he wields that power. We have established that principle with reference to sheriffs, and I believe to the very general satisfaction of the people. I am confident that a large majority of the people of the United States have, from General Jackson's day (I think he was the first who put forth the idea prominently) been convinced that it would be better for the country that a President in office should never be a candidate for re-election. It is best that the subordinates of the President should not be under a sort of partisan obligation, as they are understood to be, to advocate his re-election. It is now regarded as a sort of pledge, or rather touchstone, of fealty—"Are you in favor of the President's re-election?" And, if you are not, you are to give place to some one who is. I do not say that this State has experienced the evil of this condition of things as signally as the Union has, because the Governor has for some years since 1846 been quite limited in his patronage. But after all, he is always assailed by this consideration: if you veto that bill giving money from the treasury to support that railroad, here is a great stretch of country that will be after you at the next election. This is continually held up to him. You say he desires to secure that stamp of popular approbation which is implied in his re-election.

Hence he must defer to these "shrieks of locality" so continually sounded in his ear. He says, "The people on the line of this railroad will remember my veto and vote against me at the coming election; while those who have no interest in the undertaking will vote according to their party bias respectively." Thus he is constantly tempted to sign bills devoting public money to local benefit, when he ought to veto them. I do not say that he yields; I believe he generally does not—that our Governors, though tempted, have not yielded. But he is continually placed between two considerations: his danger of alienating localities and his duty to the whole State. He knows that the specially interested localities will give him the cold shoulder if he dares to veto their bill or canal or railroad—they will veto his re-election; that, if he refuses to yield to the demands of this or that locality, it will be swift to visit him with its vengeance. For that reason, without desiring to vote on the question of a two, three, or four years' term, I shall most earnestly vote for, as I shall advocate, the rendering of the Governor ineligible to re-election while he holds the executive office.

Mr. FLAGLER—As one of the committee reporting this article now under consideration, I wish to say this in reply to the distinguished gentleman from Westchester [Mr. Greeley], that this very question occupied the time and thought of the committee as much, perhaps, as any other that has ever engaged their attention. This circumstance, among others, influenced the decision of that committee, first, that so far as any one knew, there was no desire to have any change in the term of this office. And I presume this remark applies as well to members of that committee as to the members of this body as a whole. There is no dissatisfaction anywhere on this subject; there is no expression that has ever reached my ear in favor of a change in this regard, and the committee felt themselves bound to recommend no change which public sentiment did not demand. The gentleman from Westchester [Mr. Greeley] advocates this part of the amendment of the gentleman from Wayne [Mr. Ketcham], making the Governor ineligible, by drawing a comparison between the office of Governor and that of President of the United States; and yet the gentleman himself, before he finished his argument, was compelled to state the fact that, comparatively, the patronage of the Executive of this State is very small. And this very circumstance is a circumstance which will justify us in leaving the Governor eligible, as now, to a re-election. The gentleman referred to the exercise of the veto power, and the use of it with reference to re-election. I submit that the recollection of every member on this floor will corroborate the statement that, irrespective of what may have been the motives of the Executive in the use of this power, the electors, even in those localities affected by its exercise, have voted with their party, even when the incumbent himself was before them for re-election. I hold, therefore, looking at it in every aspect, there is no reason why this Convention, without any demand for it, should throw this barrier in the way of a re-election of the Governor, if the people of this

State should desire to secure his services for more than a single term. We should be doing something that has not been asked of us; something that perhaps in the future may work serious injury. I think this Convention will be wise in this respect, as in all others, if it leaves "well enough alone."

Mr. OPDYKE—I rise to express my entire concurrence in the views so clearly expressed by the gentleman from Westchester [Mr. Greeley]. I think that the experience of the people of the United States, in relation to the office of the President of the United States, which carries with it an immense amount of patronage, has satisfied them that a change in reference to that office, of the character proposed in the amendment now under consideration, is most desirable. The gentleman from Albany [Mr. A. J. Parker] has remarked that the people of this State have given no indication of a desire for the change now proposed. There is very good reason why they have given no such indications. They have given very little thought to the revision of the Constitution. They have given no indications of their desire on scarcely any subject in relation to changes that may be proposed. But, sir, the people of the United States have given consideration to this subject, where the amount of patronage has been such as to enable the incumbent of this highest executive office of our government to wield it in a direction to secure his re-election. I believe the majority of the members of this Convention deem it desirable, and I anticipate they will so decide, to increase the power and the patronage of the chief executive of the State. If that be done I deem it very desirable, and am certain that it will be conducive to the public good, that he be ineligible to future service for the period of at least one term if not for all time. It is well known that various efforts have been made to so amend the Constitution of the United States, as to make the President ineligible to re-election, and I have no doubt but a majority of the people are to day in favor of that change. With the very limited patronage and power now held by the Executive of this State, it is a matter of less moment; but for the reasons stated by the gentleman from Westchester [Mr. Greeley] it is even material as regards the Governor. I believe he would be more free from improper influence; more intent on a strict and faithful performance of his duty, and his efforts more earnestly directed to the promotion of the public good, if the subject of re-election were not before his mind. I can see no objection to the change. We have just voted to extend the term of the senatorial office to four years. I think it proper in view of that fact that the term of Governor should also be extended. And if we shall give him as I hope we shall, the appointment of the chief executive officers, and most of the other and inferior officers of the State, it will then be, in my judgment, very wise and very proper to insert the amendment now proposed.

Mr. E. P. BROOKS—Mr. Chairman, while I desire not to consume the time of this committee with any extended remarks, yet, inasmuch as I have heretofore expressed views elsewhere differing, in some respects, from those contained in this report, it may be proper for me to say, as a mem-

ber of the committee that reported this article, that I deemed it desirable and that I proposed in the committee room that we provide for extending the term of the Executive to three years, and for rendering him ineligible to that office for the three years next succeeding his election. I did so in the belief that this Convention was about to confer additional power and patronage upon the Executive, and in case it should do so, then the amendment proposed would be found desirable. This proposition, as has been represented by the gentlemen from Albany [Mr. A. J. Parker], was discussed at length in the committee, and at first, I think, was received favorably by other members of the committee. It may not be improper for me to state some of the considerations that induced me to yield my own views upon this subject. Among them was a desire to have our report unanimous, a proper deference for the views and opinions of my colleagues, and the further consideration arising from the probability that this Convention would provide for the making the Secretary of State and Attorney-General a part of the Governor's cabinet, to be appointed by him. In a conference with the "Committee on the Secretary of State, Attorney-General," etc., it was understood that that committee propose to fix the tenure of office of those officials at two years. If the proposition to have those officers form a part of the Governor's cabinet or council shall prevail, as I hope it may, I thought there might be less reason for extending the term; or of providing for the ineligibility of the incumbent. The argument of the gentleman in regard to the increased patronage of the Governor and the temptation to improperly dispense it, I think entitled to consideration. I concur fully in the views, in this respect, expressed by the gentleman from Westchester [Mr. Greeley] and the gentleman from New York [Mr. Opydyke]. It has been said we have heard no complaint, that no one has asked this Convention to change the tenure of office. Why is such the fact? Is it because attention has not been directed to this subject? Probably that is one reason; another may be found in the fact perhaps that there has been no just cause of complaint in the past history of the State. The present honored incumbent has certainly given none in this regard so far as I have heard. But the State may not always be so fortunate. She may not always have so intelligent, upright and discreet a man occupying the executive chamber. A weak, ambitious man may yet fill this high office, and the suggestions of ambition may influence him in dispensing the patronage of his office. Remembering that his predecessor had been re-elected he would think his own re-election necessary as an indorsement of his administration. He would be likely to say to himself and friends: "I must justify my administration by a second election. If I do not, the first is no compliment. Governor Fenton was re-elected, and by an increased majority, and why should not I be?" He casts about to see what patronage he has to bestow, what offices to fill. He calls to his aid his lieutenants and political advisers and asks, "Who is the man in this ward that controls the primary elections, who in that county that attends the con-

ventions?" He is assured that such an one attends to that county, and such an one can take care of this district. These important personages are applicants for office under his appointment; perhaps they are alike destitute of character or intelligence sufficient to qualify them for any place, except the penitentiary. The ambitious aspirant, regarding mainly his own chances for re-election, selects these serviceable men for important public positions, when he suspects, perhaps knows, that they should be serving the State in a different capacity. Would it not be well to remove from him every temptation of this character? Certainly, if he were a weak man, or "a bold, bad man," it would be. But, Mr. Chairman, another reason which influenced my acquiescence in the report is that I believe it advisable to make as few changes in the present Constitution as possible, consistent with the necessities of the times, and only those that experience has proved to be necessary. For this reason I favored the plan of small senate districts, and for this and the other reasons I have suggested, I yielded my own views in committee on the question of the term of office, united with my colleagues in this report, and with them unite in its support.

Mr. VAN COTT—I think the age in which we live is one of suspicion and imputation, that the Constitution under which we live is one of suspicion and imputation. The general rule seems to be to think the worst and say the worst of everybody; and the idea is that, by such a system—thinking the worst and saying the worst—we are likely to get an administration of angels, that the happy, golden age of the millenium will come to us. There happens, however, to be this incongruity in the system, a prevailing idea—that that which was to bring about these happy issues has brought about issues of a reverse description. We were to have had infallible judges, and infallible legislators, and infallible Governors; and yet we have heard from the beginning of the Convention thus far, that every part of the system has failed, and the charges of corruption have been almost universal, and quite universally alarming. Now, I do not believe in founding a government upon that principle at all; of erecting and constructing of rotten materials, with constant provision for the repair of the machinery, upon the assumption that it is rotten, and at once to get out of repair. I believe that a free government is a government of faith; faith not only in the people who originate and establish it, but in the instrumentalities which they use for making it, and adapting it to the ends of its creation. I believe that we corrupt by the very process of suspicion; I think we degrade by the very condition of distrust. I would repose a large confidence in what the people do in the administration of institutions, and in the selection of the great officers of the State. I would make the Governor venerable; I would surround the administration with respect. I would try to add confidence and faith to the heart of the people; I would make government strong by making it good, and by believing that it is good. I believe when we act thus we act most in harmony with free institutions, with popular institutions, and with a large,

true faith in the capacity of the people for self-government. Passing from these more general observations, I will proceed to the question before the Convention. Let me say, before adverting to it, that I hope, in the main, we shall not reject the work of this committee because it is approved by the committee, for that seems to be the principle upon which the Convention has thus far proceeded. The fact that the committee were unanimous, the fact that it was a strong committee, the fact that they had exercised great thought on the subject on which they had reported, seems to have been regarded as a reason why the bulk of their work should be rejected. I hope the bulk of this report is not to be dealt with, as others have been, upon that principle. I listened with great interest to the distinguished and venerable Chairman [Mr. C. L. Allen], who addressed us this morning. I am prepared to accept what his committee have given us with thankfulness for the labor they have bestowed upon their work, and yet I am in favor of a slight modification of this very first section which falls under our criticism. I am a little puzzled to know how I shall vote on this subject, because the different propositions are so related that a modification of one involves a modification of all the rest. Now, given a Governor with a short term of office, and no considerable executive patronage, and I am against rendering him ineligible to re-election for the next term. But given a long term to begin with, and considerable executive patronage, then I am for rendering him ineligible for the next term; not on the ground that the Governor must become corrupt under such a system, but on the ground that it would preserve this very faith, of which I have spoken, in the Governor, and in the working of the system; for I would have the Governor not only pure, but, like Caesar's wife, "beyond suspicion," by placing him in office for a long term and strengthening the Executive by a large patronage, with no temptation to bestow that patronage except in the interest of the people. I would have him so placed that the people would not believe that he was influenced in the bestowal of patronage, and, in the exercise of his power, by personal considerations, by a mere private ambition. Therefore, if we are to invest the Governor with competent executive patronage, I agree entirely with the distinguished member from Westchester [Mr. Greeley] in the principle of rendering him ineligible to re-election. If, on the other hand, we constitute the office for a term of two years, with the exceedingly limited patronage of the Executive under the present Constitution, then there would seem to be no reason for that restriction in regard to a future election, because there would be no grounds for the suspicion from which I wish to preserve the character of the administration of the Executive for the time being. But I would have a longer term; I would have larger patronage. I understand that it is a prevailing opinion in the Convention that the office of the Executive is to be made more respectable by a larger patronage and a larger responsibility; that the things which have to be done of an executive character, and which are now done without responsibility, shall be done under responsibility by connecting them

with the office of the Chief Executive and holding him to a faithful administration of a large system. And acting upon that idea—investing the Governor with these powers, loading the office with these larger responsibilities, I would, as I said before, save him from a suspicion that may attach to the actual administration of the office. Then I am in favor of a longer term, because I think when a public man separates himself either from the pursuits of private life or from other relations, it should be for a considerable term. I am generally in favor of a considerable term of office in all high offices. I would especially make the office of the Executive stronger—give greater dignity to it, and so secure to the people the fruits of a larger experience. I would give the Executive a more permanent *status*. I am in favor, therefore, of the longest term proposed by this amendment—the term of four years, and the principle of ineligibility connected with it. If you cut it down to three years, I am not in favor of ineligibility; but if you come down to two years, then I am absolutely against any limitation upon eligibility.

The CHAIRMAN—The question is on the amendment of Mr. Ketcham to the amendment proposed by Mr. S. Townsend.

Mr. FOLGER—I suppose that question is susceptible of a division. I ask that the question be taken on the first proposition, the extension of the term of office to four years.

The question was then put on the first division, and it was declared lost by the following vote—ayes 27, noes 50.

The question was then announced on the second part of the amendment of Mr. Ketcham, declaring that the Governor shall not be eligible for re-election for the term succeeding his incumbency.

Mr. M. I. TOWNSEND—It is exceedingly gratifying to my ears to find that some persons for whom I have a most profound respect upon this floor have, either by a change of weather or some other circumstances, come to take a happier view of the state of the world the prospects of official character and conduct in coming times. I have really felt depressed during the last week at the melancholy look that has overcast the faces of a great many whom I have been accustomed to see cheerful and buoyant, at the idea of the awful state of things that exist in the country. Perhaps I should not have risen now had it not been to express my exceeding gratification at the change that has come over them. I am opposed to rendering the Executive of this State ineligible, and for the simplest reason in the world. I believe that the prospect and hope of re-election is the best means of securing good conduct in office. I do not believe it is a small consideration to offer to an incumbent in office, whether in elevated or moderate condition, to say, "if you conduct yourself worthily of a re-election you shall receive the approbation of those who placed you in an official position." I know of no office where the offer of such a boon, in my opinion, would not be likely to secure a better course of conduct in the discharge of duties, in that office. Now, I will say to the gentleman from Wayne [Mr. Ketcham] that if the wishes of some gen-

Glemen, as they have been expressed on this floor, shall be accomplished by this Convention, that there shall be a restoration of patronage to the Governor, such as has been intimated, there would be no need of the provision, for, with the wielding of such a patronage, no Governor could be re-elected in this State. I will refer to the history of the State to show that such is the fact. Take the three governors who last held office before the change in the Constitution in 1846. It is true that the first of those governors—Governor Seward—was re-elected. Gentlemen's memories will tell them that the exercise of patronage, which the Governor then possessed, created a great party that eventually caused the rejection of Governor Seward by the people of this State—a party that followed Mr. Seward with invincible hatred—until Mr. Seward turned upon his own track and marched in a direction opposite to that which he had pursued up to that time. The next Governor was Governor Bouck. He had the wielding of that patronage. As that patronage was wielded (I do not say it was badly used in the case of Governor Seward), it became impossible for Mr. Bouck to be re-elected. He was followed by that man so eulogized by the gentleman from Washington [Mr. C. L. Allen] to-day, Silas Wright—a man I loved in his lifetime, and shall love as long as God gives me memory. Yet, at the end of two years Silas Wright was doomed to defeat, in consequence of the patronage that he possessed. Take the history of the last twenty years, and it will be found that the Governors we have had, shorn of this patronage, have been enabled so to conduct themselves in office that, at least, they seemed to maintain the confidence of their political friends. Where is the man who dared to breathe a word of hostility against John A. King, when he went out of office? Did not the political friends of Governor Seymour retain their confidence in him when he went out of office? Did not the political friends of Governor Morgan retain their confidence in him when he went out of office? Has not the present Executive the confidence of his political friends—I had almost said of those who are politically arrayed against him? But if the patronage shall be restored, there is no need of this proposition of the gentleman from Wayne, if you desire to prevent his re-election. It is putting into the hands of the Governor a power he never should possess, a power that has never been wielded for the best interests of the people of this State, and never will be—not because the Governors will not be honest—for I believe our Governors have been selected from the best men in the world, and that there is as much material in the world to-day from which to select Governors as there ever was. I have already expressed myself as not believing that dark days have come upon us. The Governor sits in the center of the State. He is not omniscient. The people in every county know who are fit men for office in their respective counties, better than any Governor can know. The Governor of the State sits in the center, and he acts from the best light he can get. It is for that reason he must of necessity make mistakes, and making those mistakes, he secures his own destruction in the exercise of power that never ought to be

instructed to or imposed upon him with discharge of duties. With regard to the proposition to extend the term of the Governor to three years, allow me to say one word. I am entirely opposed to making any change upon this subject, not only from my own convictions of what is right, but because I certainly have not heard any desire expressed on the part of the people of this State that there should be that change. It is said that we have now extended the term of Senator to four years. True. But I do not believe the people of the State have called for that change, and I do hope yet to see this Convention return to the provisions of the Constitution upon this subject as they have existed since 1846. I believe it is sufficient to make changes, that it is clearly necessary to make, in order to satisfy the public mind, or meet some great public exigency that may have come upon us.

Mr. PAIGE—Gentlemen who have spoken against the eligibility of the Governor for a second term seem to have based their views upon the hypothesis that the appointing power of the Governor will be increased by this Convention. Others have expressed the opinion that if his patronage remains as it is now, and the two years' term continue, it will be preferable not to adopt the suggestion of ineligibility. It seems to me to be quite hazardous to be voting for this proposition of ineligibility while the proposition of increasing the patronage of the Governor remains undetermined by the Convention. The term of the Governor of this State was three years from 1777 to 1822; from 1822 to this time it has been two years. I do not think any delegate will say that the Governor, while his term has remained at two years, has ever derived any particular advantages from the appointing power with which he has been invested over other competitors in respect to a re-election. With the present amount of patronage the Governor, certainly, has no superior advantages, if he should desire to use his patronage, over any other competitor for re-election. We have heard no complaint against the incumbents of the office of Governor that they had used their patronage to aid in a re-nomination or re-election. One gentleman has expressed the opinion that this patronage has been injurious to the incumbent in respect to a re-election. This question has been carefully and thoughtfully considered by the committee, and, as I have heard no sufficient reasons advanced by any gentleman to justify a change of the term of office reported by the committee or the adoption of the principle of ineligibility, I hope the term will remain as reported. I shall vote against a change of the term and against the proposition of ineligibility.

The question was then put upon that portion of the amendment of Mr. Ketcham inserting after the word "years" in the second line, language excluding the Governor from eligibility to office for the ensuing term, and it was declared lost.

The question recurred on the amendment of Mr. S. Townsend, and it was declared lost.

The SECRETARY proceeded to read the second section, as follows:

SEC. 2. No person except a citizen of the United States shall be eligible to the office of Governor, nor shall any person be eligible to that office who shall not have attained the age of thirty years,

and who shall not have been five years next preceding his election a resident within this State.

There being no amendments, the SECRETARY proceeded to read the third section, as follows:

SEC. 3. The Governor and Lieutenant-Governor shall be elected at the times and places of choosing members of the Assembly. The persons respectively having the highest number of votes for Governor and Lieutenant-Governor shall be elected; but in case two or more shall have an equal and the highest number of votes for Governor or for Lieutenant-Governor, the two Houses of the Legislature, at its next annual session, shall forthwith, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for Governor or Lieutenant-Governor.

There being no amendment, the SECRETARY proceeded to read the fourth section, as follows:

SEC. 4. The Governor shall be Commander-in-Chief of the military and naval forces of the State. He shall have power to convene the Legislature (or the Senate only) on extraordinary occasions. He shall communicate by message to the Legislature at every session the condition of the State, and recommend such measures to them as he shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures as may be resolved upon by the Legislature, and shall take care that the laws are faithfully executed. He shall at stated times receive for his services a compensation to be established by law, to be first fixed by the Legislature at its first session after the adoption of this Constitution, and which compensation shall neither be increased nor diminished after his election or during his term of office.

Mr. ROBERTSON—I have an amendment to suggest to the 14th line. Strike out the words "neither be increased nor" and insert in lieu thereof the words "not be." I do not see any good reason why the power of the Legislature to increase the salary of the Governor should not remain with them. I cannot understand why it should be considered as a mere contract between the Legislature and the Governor that he should perform the duties of Governor during his continuance in office for a stated compensation. Circumstances may arise, and heretofore have arisen in this State and the United States, by which the rate of compensation fixed at the time of the Governor entering upon the duties of his office has varied during his continuance in office. I can see no reason for the dread which our fathers had on the other side of the water of the danger of combination between the Executive and the Legislature to bring up influence enough to pass improper laws. I have no such apprehension in regard to the Governor if elected by the people of this State. I see no reason why the Legislature (although by a threat of diminishing the salary the Governor might be forced to give his signature to measures he might not perhaps otherwise approve) should not be intrusted with authority to enlarge his compensation during his continuance in office. A great change might arise in the price of living during his continuance in office, making his expenses

greater. Duties might be devolved upon him, or hospitalities which might induce the Legislature to increase his salary, and not diminish it. I therefore propose that these words should be stricken out and those that I have stated inserted in their place.

Mr. S. TOWNSEND—I have a proviso I wish to offer for the consideration of this Convention at a later period of its session, submitting the question separately to the people whether at a fixed future period all salaries, interest and taxes shall be paid in specie. It now lies on the President's table. This is the only mode to obviate the difficulty suggested by my friend from New York [Mr. Robertson]. A salary paid in a currency which was worth at one time 35 cents, another time one hundred, is painfully unjust and inconvenient to this class of public employees, who require a fixed remuneration to require properly their services. When that comes properly before the Convention as a distinct proposition, I hope my friend will support it.

The question was then put on the amendment of Mr. Robertson, and it was declared lost.

There being no other amendments the SECRETARY proceeded to read the fifth section as follows:

SEC. 5. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of a military force thereof, he shall continue commander-in-chief of all the military force of the State.

There being no amendments the SECRETARY proceeded to read the sixth section as follows:

SEC. 6. The Lieutenant-Governor shall possess the same qualifications of eligibility for office as the Governor. He shall be President of the Senate, but shall have only a casting vote therein. If, during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or he be absent from the State, the President of the Senate shall act as Governor, until the vacancy be filled, or the disability shall cease.

There being no amendments the SECRETARY proceeded to read the seventh section as follows:

SEC. 7. The Lieutenant-Governor shall receive for his services a compensation to be established by law, to be first fixed by the Legislature at its first session after the adoption of this Constitution, and which compensation shall neither be increased nor diminished after his election or during his term of office, and he shall not receive or be entitled to any other or further compensation, fees or perquisites for any other duties or services he may be required to perform by virtue of his office by this Constitution or by law.

There being no amendments, the SECRETARY proceeded to read the eighth section as follows:

SEC. 8. Every bill which shall have passed the Senate or Assembly shall, before it becomes a

law, be presented to the Governor. If he approve of the bill he shall sign it. But if he disapprove of it, or of any part of it, containing separate and distinct provisions, he shall return it to that House in which the bill shall have originated, with his objections to the whole or such part or parts of it as he shall disapprove, which shall enter the objections at large in their journal and proceed to reconsider it. If, after such reconsideration, either of an entire bill or of a part or parts of said bill objected to, as the case may be, two-thirds of all the members elected to that House shall agree to pass the whole bill, it shall be sent, together with the objections, to the other House, by which it shall be reconsidered, and if approved by two-thirds of all the members elected to that House it shall become a law, notwithstanding the objections of the Governor. If either of the two Houses shall not thus approve of the part or parts objected to, the bill containing such part or parts as shall be approved by the Governor shall, without unnecessary delay after the vote is taken on such reconsideration, be engrossed as a separate bill and returned to the Governor for his signature. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature shall by their adjournment prevent its return, in which case it shall not be a law. The right of the Governor to sign bills shall cease with the adjournment of the Legislature.

Mr. BURRILL—Mr. Chairman—

Mr. C. L. ALLEN—I desire to say one word on the subject of this eighth section, which I omitted to state in making my remarks at the beginning of this debate. It is well known that bills accumulate on the Governor at the close of each session of the Legislature. The present incumbent, informed me a few days since that there were about four hundred and eighty bills on his file at the close of the session of the last Legislature. Now, it was impossible for him, to use his own words, physically or mentally, to read one-quarter of these bills and give them a timely consideration prior to giving his signature. If, therefore, time was to be allotted for the signing of bills after the adjournment of the Legislature, he suggested that the time be shortened and that he should not have the whole recess, as under the present Constitution, but that the time should be limited to thirty days after the close of the session of the Legislature to sign bills, if it should be determined to give any time for that purpose at all—

Mr. BURRILL—If the gentleman will permit me, I would like to make a suggestion. With his consent I would like to make a motion to ask that the consideration of this section be suspended until the coming in of the report of the Committee on the Powers and Duties of the Legislature, which committee has had this subject under consideration.

Mr. C. L. ALLEN—I do not know that there is any objection. It is pretty near the time of adjournment.

The CHAIRMAN—That can only be reached by a motion to rise and report progress.

Mr. C. L. ALLEN—I will adopt that suggestion if the committee think proper.

Mr. BURRILL—Then I move that this committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Burrill, and it was declared carried.

Whereupon the committee rose, and the President resumed the chair in Convention.

Mr. KERNAN, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Governor, and Lieutenant-Governor, their election, tenure of office, etc., had made some progress therein; but not having gone through therewith, had requested their Chairman to report that fact to the Convention, and ask leave to sit again.

The question was put on granting leave, and it was declared carried.

Mr. BURRILL—I move that the committee be discharged from the consideration of the eighth section of this report until the coming in of the report of the Committee on the Powers and Duties of the Legislature.

The PRESIDENT—The Chair would inform the gentleman that his motion is not admissible.

Mr. SEAVER—I ask leave of absence for Mr. Merriitt.

There being no objection, leave was granted.

Mr. MORRIS—I move that the Convention do now adjourn.

The question was then put on the motion of Mr. Morris, and it was declared carried.

So the Convention adjourned until Monday evening at half-past seven o'clock.

MONDAY, August 12, 1867.

The Convention met at half-past seven o'clock.

P. M.

Prayer was offered by Rev. AMBROSE O'NEILL.

The Journal of Friday was read by the SECRETARY, and approved.

Mr. BELL presented the petition of Jesse Babcock and forty others, citizens of Brownville, Jefferson county, praying for a provision in the Constitution securing to the people of this State the right to catch fish in the international waters of this State.

Which was referred to the Committee on the Preamble and Bill of Rights.

Mr. BARTO presented the petition of M. S. Cuykendall, Hoyt Parcell and others, citizens of Owasco, praying for the incorporation of a clause in the Constitution abolishing the office of school commissioner and restoring the former system of town supervision.

Which was referred to the Committee on Education.

Mr. DUGANNE presented six several petitions from citizens of New York asking for a provision

in the Constitution prohibiting the donation of public moneys to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. GRAVES presented the petition of Ambrose Hill and fifty-six others, citizens of Oneida county, asking that a clause be incorporated in the Constitution prohibiting the sale of intoxicating liquors.

Which was referred to the Committee on Adulterated Liquors.

The PRESIDENT presented a communication from Hon. Thomas Hillhouse, Comptroller, in answer to a resolution of the Convention adopted on the 8th instant.

Which was referred to the Committee on the Finances of the State.

The PRESIDENT also presented a communication from Thomas C. Acton, president of the board of commissioners of Metropolitan police, in answer to a resolution of the Convention adopted on the 2d instant.

Which was referred to the Committee on the Judiciary.

Mr. BELL—I hold in my hand a letter from Mr. Prosser, of Erie, a member of this Convention, who states that he will be unavoidably absent for two days, and desires me to ask leave of absence for him for that time.

There being no objection leave was granted.

Mr. HITCHCOCK—I am this evening in receipt of a telegram from my colleague, Mr. C. L. Allen, of Washington, stating that he is seriously ill, and requesting me to ask leave of absence for him. As I believe him to be seriously ill, it is necessary, I think, that his leave of absence should be indefinite.

There being no objection leave was granted.

Mr. S. TOWNSEND offered the following resolution:

Resolved, That the Committee on the Preamble and Bill of Rights, be requested to take under consideration the propriety of recognizing in the Constitution the principle of continuing a certain portion of the compensation to such designated officers in the civil service of the State, who, after a term of faithful and honorable service, have retired from public duty.

Which was referred to the Committee on the Preamble and Bill of Rights.

Mr. E. A. BROWN offered the following resolution:

Resolved, That the Committee of the Whole be discharged from the further consideration of the eighth section of report of the standing Committee on the Governor and Lieutenant-Governor, their election, etc., and that the same be referred to the standing Committee No. 3, on the Powers and duties of the Legislature, etc.

Mr. E. A. BROWN—A single word. It will be remembered—

Mr. ALVORD—If it gives rise to debate, the resolution must lie over under the rule.

The PRESIDENT—The resolution relating to the order of business, the Chair rules it may now be considered.

Mr. E. A. BROWN—I simply desire to remark, Mr. President, that the Committee on the Powers and Duties of the Legislature have very carefully

considered the proceedings that ought to take place in case a bill is vetoed by the Governor. That is the principal subject-matter of this eighth section; and the committee, of which I am a member, are very anxious it should not be considered until it be considered in connection with our report, which will be ready soon.

Mr. WAKEMAN—If I understand the resolution aright, it proposes to discharge the Committee of the Whole from the Consideration of that section. Am I right?

The PRESIDENT—It is pointed toward a certain section.

Mr. WAKEMAN—The eighth section, which I deem the most important section of the entire article. If the operation of taking it from the Committee of the Whole will cut off debate, it seems to me the resolution ought not to be adopted. That section of the report received a good deal of consideration at the hands of the committee, and we deem it the most important change made in the whole article. If the Committee of the Whole is to be discharged from the consideration of that section, and the matter referred to another committee, I hope it will be voted down. I believe that section ought to be considered in Committee of the Whole by itself. If it shall be deferred altogether for the present, I shall not object to it; but in the absence of the chairman of the committee [Mr. C. L. Allen], who I understand is sick, I hope this resolution will not be adopted.

Mr. HITCHCOCK—I merely desire to say to gentlemen that the chairman of the committee [Mr. C. L. Allen] was very anxious that the consideration of the article should be postponed until his return, if practicable.

Mr. RUMSEY—The only effect of sending it to the Committee on the Powers and Duties of the Legislature will be to have them report upon this section; then it will come back to the Convention, and go again to the Committee of the Whole on the report of the two committees, where it will be discussed. That I understand to be the effect of it, and nothing more.

Mr. A. J. PARKER—I hope that last section will not be sent to another standing committee. It seems to me quite unnecessary. I am willing it should be postponed in consequence of the illness of the chairman of the committee [Mr. C. L. Allen], who reported that section. It would be very well, perhaps, to postpone the consideration of it, as I suppose he will probably be here in a few days again; it might be postponed, perhaps, until the other committee—the Committee on the Powers and Duties of the Legislature—shall make a report; but it seems to me improper to send it to another standing committee. It ought to remain in Committee of the Whole to be considered at such time as shall suit the Convention.

Mr. ALVORD—It seems to me to be rather delicate, to say the least of it, to take a matter, which evidently is within the province of the standing committee of this Convention, which is ready to be acted upon in Committee of the Whole, away from that committee and send it to another committee. It would look upon its face as if the Convention had not sufficient confidence

in the committee that reported it, and hence desired to send it to another committee. It strikes me, upon the discussion of this matter, if the gentlemen composing the Committee on the Powers and Duties of the Legislature have any different views from those suggested by the Committee on the Governor and Lieutenant-Governor, they have the right to express those views upon the floor of this Convention, and before the Committee of the Whole. I trust, therefore, under these circumstances, we will not seem to cast the reflection that the gentlemen who composed the committee, and who made this report, have not done their duty, by sending it to another committee to do it over again.

The question was put on the resolution of Mr. E. A. Brown, and it was declared lost.

Mr. DUGANNE—I propose to submit a resolution, and conceiving it is proper it should be referred to the Committee of the Whole, having under consideration the subject of the Governor, Lieutenant-Governor, etc., I propose to offer it, to be referred to the Committee of the Whole, or to take such other disposition as the Convention may determine, and ask it may be printed.

The SECRETARY proceeded to read the resolution as follows:

Resolved, For the better maintenance of public order and the security of municipal and other local interests, there shall be created by nomination of the Governor, and consent of the Senate, an executive council of six members, who shall hold their office during the term for which the Governor is elected, unless sooner removed by law or for cause, and who shall be known and designated as the Governor's council.

1. A Secretary of State, with powers and duties to be defined by law.

2. An Attorney-General who shall be a lawyer of not less than ten years practice in the courts.

3. A Secretary of Public Police, with auxiliary boards of police in cities or districts, to be constituted by appointment in like manner, whenever the public good may require and the Legislature direct; and to report annually, or when called upon, to the Secretary of Public Police.

4. A Secretary of Fire and Insurance with auxiliary fire department boards, in cities or districts to be constituted by appointment in like manner as himself, whenever the public good shall require and the Legislature direct. And all local boards of fire commissioners appointed as above, and all fire insurance companies in the State shall report annually, or when called upon, to the Secretary of Fire and Insurance.

5. A Secretary of Public Buildings, Parks and Water-fronts, with auxiliary boards in cities and districts, to be constituted by appointment in like manner as himself, whenever the public good shall require and the Legislature direct, and to report annually, or when called upon, to the Secretary of Public Buildings, Parks and Water-fronts.

6. A Secretary of Financial Audit and Assessment, with auxiliary boards in cities and districts, to be constituted by appointment in like manner as himself, whenever the public good shall require and the Legislature direct, and to report annually, or when called upon, to the Secretary of Financial Audit and Assessment. The State Assessors and

all tax commissioners appointed under authority of the Governor and Senate shall report annually to the Secretary of Financial Audit and Assessment.

Which was referred to the Committee of the Whole, and ordered to be printed.

The PRESIDENT—The only unfinished business in the general order is the report of the Committee on the Governor and Lieutenant-Governor.

Mr. A. J. PARKER—I move that that be passed over for the present.

The PRESIDENT—If there is no objection it will be laid aside after the statement of the gentleman from Washington [Mr. Hitchcock] of the sickness of the chairman of that committee that made the report.

Mr. ALVORD—I move the Convention do now adjourn.

The question was put on the motion of Mr. Alvord and it was declared carried.

So the Convention adjourned.

TUESDAY, August 13, 1867.

The Convention met at ten o'clock.

Prayer was offered by Rev. THOMAS A. BURKE.

The Journal of yesterday was read by the SECRETARY, and approved.

The PRESIDENT presented the petition of John R. Pitkin relative to restraints upon manufacturing corporations.

Which was referred to the Committee on Corporations other than Municipal, Banking and Insurance.

Mr. CURTIS presented the petition of Rev. E. Moore, Jr., and ninety-two others against donations to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. FOWLER presented thirteen petitions on the same subject.

Which took a like reference.

Mr. KRUM—I desire to ask leave of absence for my colleague, Mr. Miller of Delaware. I received a letter from him last night—written not in his usual bold hand, but bearing on its face evidence that the writer of it was sick—stating it was with great difficulty that he got from his bed to his chair even with assistance, and he did not know when he should be able to attend this Convention, and desired me to obtain a further leave of absence for him; and I ask, under such circumstances, that such leave of absence may be made indefinite.

There being no objection leave was granted.

Mr. L. W. RUSSELL—I desire to ask leave of absence for my colleague, Mr. W. C. Brown. He went home sick yesterday.

There being no objection leave was granted.

Mr. KETCHAM—I desire to ask leave of absence for myself for the rest of this week. I received a communication this morning which makes it necessary for me to go home to attend to some business that I must attend to personally. There being no objection leave was granted.

Mr. SHERMAN—I ask leave of absence for my colleague, Mr. Williams, who has been called away on business for four days.

There being no objection, leave was granted.

Mr. GREELEY — I ask leave of absence for Friday of this week, for myself.

There being no objection, leave was granted.

Mr. LOWREY — I ask an indefinite leave of absence for Mr. Rolfe, as he has met with an accident. I received a letter from him this morning, stating that he would be in his place as soon as possible, and requesting me to ask indefinite leave of absence for him.

There being no objection, leave was granted.

Mr. ARCHER — I received a letter from Mr. Ballard this morning, stating that he was too ill to start for Albany, and I ask leave of absence for him for two days.

There being no objection, leave was granted.

Mr. GOULD — I offer the following resolution: "That the Committee on Industrial Interests be requested to inquire whether some additional provisions should not be made to facilitate the irrigation of agricultural lands, and for the improvement of mill privileges in this State."

Which was referred to the Committee on Industrial Interests.

The PRESIDENT — The special order being the report of the Committee on the Governor and Lieutenant-Governor being the unfinished business, will be passed on account of the sickness of the chairman [Mr. Kernan]. The next general order is the report of the Committee on Currency, Banking and Insurance.

Mr. BEADLE — The two committees, one on Currency, Banking, etc., and the Committee on Corporations other than Municipal, etc., came to the conclusion they could better discharge their duties by uniting in their meetings. They did so, and made a joint report. Mr. Ballard, the chairman of the joint committee, as the Convention knows, is detained at home by sickness, and I ask that the consideration of this report may be deferred.

The PRESIDENT — There being no objection, that will be done. The next general order is the report of the Committee on Town and County Officers, their election, etc.

Mr. BURRILL — The report of the Committee on Town and County Officers, their election, etc., is necessarily connected with the report of the Committee on Cities, and I move that the consideration of the report of Town and County Officers be laid over until the report of the Committee on Cities can also be considered.

Mr. ALVORD — I trust not. I do not see what possible connection there can be between the two. I hope that motion will not prevail.

The question was put on the motion of Mr. Burrill, and it was declared lost.

The Convention then resolved itself into Committee of the Whole on the report of the Committee on Town and County Officers, etc., Mr. BELL, of Jefferson, in the chair.

The SECRETARY then proceeded to read the first section, as follows:

SEC. 1. There shall be elected in each county by the qualified voters therein, at the time of holding general elections, a sheriff, county treasurer, county clerk, county supervisor, and as many coroners as may be prescribed by the Legislature, who shall hold their offices respectively

for the term of three years, unless sooner removed by competent authority. Sheriffs shall hold no other office during their incumbency, and shall not be re-eligible, or act as under-sheriff or deputy for the succeeding term; but the retiring sheriff shall finish all business remaining in his hands at the expiration of his term, for which purpose his commission and official bond shall continue in force. They may be required to renew their security from time to time, and in default of giving such new security, their offices shall be deemed vacant. The county shall never be responsible for their acts. The Governor may remove any officer in this section mentioned, for incapacity, neglect of duty, malfeasance, intemperance, turpitude, or crime, first giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense.

Mr. GREELEY — I move to strike out the words "county supervisor," in the third line of this section. I believe there is a very general desire among the people of this State that we shall diminish the number of tax-consuming officers whom they are required to subsidize. I came to this Convention with an earnest hope that I might be enabled to do something—to give one vote, at least—in favor of diminishing the number of officers who are quartered upon the people. I see here a totally new officer made—an officer whose functions, it seems to me, are much more ornamental than useful, except the important one of drawing his pay. He is not to vote; he is to be a county supervisor—a mere figure-head—a presiding officer without real authority—and it seems to me that his creation will run directly counter to what I feel to be an earnest and a just public sentiment. I therefore move that this officer shall be stricken out, and I hope that the creation of this office will be negated by this Convention, and of course I will follow it up by moving to strike out in the various places where such county supervisor is spoken of. They will naturally fall with this; but it does seem to me we do not need this creation of a new officer who will have no important functions to perform—who will not have even any substantial power, unless it may be a veto power, which will be found practically inoperative—and we should do the public a service, and satisfy a general and just expectation, by failing to create any new office, except where we abolish two or three and make one. Without further remarks, I hope this officer will be dispensed with.

Mr. SMITH — It may be proper, perhaps, in behalf of the committee, to explain the reasons for proposing this new officer. So far as we can understand the demand of the Convention, and the demand of the people, it seems to be clear that there is a desire and a determination to transfer local legislation from the Legislature to the boards of supervisors in the various counties. It is agreed on all hands that the local legislation which presses so heavily on the Legislature every winter, and gives occasion for so much corruption and log-rolling, should, if possible, be transferred to some other body. There has been a great cry within the last few years, in relation to the corruption of the Legislature, and undoubtedly to a great extent there is cause for it;

and acting here as we do in the capacity of a Convention, to organize or reconstruct the government, we are bound to take notice of it. I cannot agree with some gentlemen who have suggested upon this floor that we have no right to charge corruption on the Legislature. If that were addressed to us as individuals, I should admit its force; but when addressed to us in our public capacity the case is different. Acting as we are in the capacity of a Convention, commissioned by the people to reconstruct and organize a frame of government, and provide a remedy for the evils that exist, it seems to me we are bound to take notice of public and notorious facts. In alleging that there is corruption in the Legislature, we do not by any means intend to say that all of the members of the Legislature are obnoxious to this charge. We know they are not, for that body has contained, and still does contain, doubtless, many honest men, men of integrity, men of character, who cannot be approached by any dishonest or unworthy proposition. But still that legislative corruption is a great and growing evil we all know and we all feel, and the question arises, How shall that be remedied? As was stated very clearly the other day by a gentleman of experience in the Legislature, on this floor [Mr. Folger], much of this difficulty arises from local schemes, which give rise to that system known as log-rolling. A, from one locality, has a scheme which he wishes to put through the Legislature. B, from another locality, has another scheme which he wishes to get through. A applies to B to give him his vote, and B consents upon the condition that he shall receive the vote of A; and so scheme after scheme is every winter engineered through the Legislature. Some of these schemes are not only without merit, but totally corrupt; and it often happens, sir, that these schemes are pressed through without the knowledge of the localities injuriously affected by them, or by such means and appliances as to render opposition useless. It often happens, also, that the merits of these measures are wholly unknown to the great body of the Legislature. I believe there is a kind of courtesy existing among members of the Legislature, by which it is understood that one member shall not interfere with the local schemes of another, unless they become matters of discussion and general interest in that body. The result is that some members vote for measures of which they know nothing, and others vote for schemes which they know to be wrong, in order to insure the success of their own measures. A member is charged with the duty of securing the passage of some local or private scheme, and it is expected by his constituents, or those interested in it, that he will do it, and if he has not sufficient influence or skill to engineer it through the Legislature, he is not considered worthy of their support. It places the representative under a strong temptation to avail himself of the log-rolling system, as stated by the gentleman [Mr. Folger] in the discussion upon the question of the Senate. It has been pressed upon the committee that this local legislation should be devolved upon the board of supervisors. It is insisted that they would understand these local

matters, that at home these schemes would be ventilated; that there would be no chance for the corruption that exists in the Legislature; that the representatives at home would be subjected to a direct responsibility; that the eye of their constituents and of the whole community interested would be upon them, and that they would not dare to enter into those corrupt schemes to which they lend themselves when further removed from the people, and not under their immediate inspection. Now, Mr. Chairman, yielding to this general demand, the committee have reported a provision conferring a large amount of this local legislation upon the local boards. If the Convention shall see fit to adopt the proposition to transfer this local legislation from the Legislature to the boards, then the idea of some check upon hasty and inconsiderate legislation is suggested, and seems to be necessary. It was pressed upon the committee urgently, especially in view of the action of boards in populous communities and cities. It was represented that oftentimes schemes of corruption are rapidly passed through the board of supervisors, and before they can be enjoined by action of the courts, the schemes are executed, the money appropriated, and the people left without remedy. It was believed by the committee that if some officer, having the power to interpose a veto, were elected by the people to preside over the board, it would check hasty and corrupt legislation. Now, the county supervisor is an officer elected by the whole county. All the electors vote for him. He does not represent any particular locality, nor any particular interest, but he represents the whole county. He sits as president of the board, and we may reasonably suppose that an office of that dignity and importance would be filled by men of character, men of legal knowledge and experience; and they could bring their knowledge and ability to bear to the advantage of the board in the important duties devolved upon them. Listening to the discussions of the board, and knowing the character and merits of the several matters before it, he would be prepared at once, during the session of the board, to interpose a veto, in case of hasty, injudicious, or corrupt legislation. He is not, as suggested by the gentleman from Westchester [Mr. Greeley], a mere figure-head; he has an important duty to perform. It is true he does not vote except in case of a tie, and then he gives a casting vote; but the important function of the office as proposed by this article is the veto power. Now, it is submitted that if the committee adopt the first proposition, to wit, the transfer of local legislation from the Legislature to the boards, then it seems to be desirable, nay, it seems to be absolutely necessary that there should be some check upon their action. I am aware that the people do not desire the creation of unnecessary offices; but they do desire and demand that there shall be a purification of the Legislature. They desire to be saved from these schemes, which operate oppressively upon them, take the money from their pockets and corrupt the Legislature; and they are willing that any plan shall be adopted by this Convention that will remedy the evil. If in doing this it becomes necessary to create

another office, they will not complain of it. As far as I have been able to learn, and I have taken considerable pains to ascertain the wishes of the people on this subject, having conversed with them in different parts of the State, I have not found a dissenting voice on this question. They all say "Give us the county supervisor who will act as a check and balance to the board, devolve upon them the power of local legislation, and it will remedy a great and growing evil which now exists." It is for these reasons that the committee have proposed this county officer. It is not created merely for the purpose of creating a new office, or of making a change, but as an absolute necessity growing out of another change which is demanded by the people.

Mr. OPDYKE—I think the reason given by the chairman of the committee, for the creation of the office of county supervisor, should be satisfactory to the Convention. It is important, I think, that there should be a supervisory power over the action of the board, and this is a very compact and skillful method of accomplishing that end. I would only differ with the chairman in regard to the power he gives to the president. He has given him a supervisory power—he says a veto power. But it will be found in practice that it is not such a veto power as will prove effective. No time is allowed the president for the presentation of his objections, and none required of the board before it shall be authorized to act on such objections. Experience has taught me that if we desire any benefit from this supervisory power, the allowance of time should be involved. The president should have at least ten days to present his objections; and I would go further, I would give him an effective veto, such as we give the Governor. I would not permit the measure or bill to be passed over his veto short of a two-thirds vote. In the city of New York the mayor of that city has the supervisory power over the board of supervisors which is proposed to be given here to the president of all such boards. My experience has taught me that a simple negative, which can be overborne by a bare majority, is utterly ineffective. I should prefer, therefore, when we come to the proper section, to embrace the condition that the president of the board should have ten days in which to present his objections, and that it should not be passed over his veto until ten days more had elapsed, giving the people of the county time to know what has been done and to interpose their views if they believe it to be wrong; in addition to which I would make his veto power effective. With regard to this first section, before we pass over it, I shall propose another amendment to exclude from its operation the county of New York. That county, as is known, in its jurisdiction is co-extensive with the city. We have there at present a duplicate government, city and county, co-extensive in their jurisdiction, which can—with great propriety and great economy, as experience has taught us—be devolved on the city government alone. It is altogether unnecessary, therefore, to extend this power to that city.

Mr. GREELY—I find that the remarks of the distinguished ex-mayor of New York [Mr. Opdyke], substantially confirm the objection

which he seems to undervalue. I said that this officer was a mere figure-head. His remarks practically prove that, as defined in this article, he will be an officer of large promise and very small performance. Now, then, I have no sort of difference with the honorable chairman of this committee [Mr. Smith], as to the expediency—nay, the necessity—of a substantial check on the legislative power which it is proposed in this article to accord to the board of supervisors. My objection is, that there is no substantial negative—no real veto power. As the gentleman from New York says, this article simply provides that a majority of the elected town supervisors shall be necessary to override the county supervisor's veto; and this will amount to nothing. We know how these things are done. What are called "big things" are always "fixed" outside of the Legislature or board. They are arranged, and prepared, and bargained for, and settled, before they appear in the board at all. What is transacted there is a mere formality, necessary, certainly, to give legal validity to the scheme, but the work has all been done beforehand. We know who are to vote for it, and how much stock is to be represented by each vote that is given for it. Practically, it is understood how these things are. Now, I say, you have an officer here who costs something, and can do nothing, or next to nothing. The whole power that should be given—in my judgment—the whole check on venal and bad legislation by a board of supervisors should be: first, requiring due publicity. Every scheme involving railroads or other roads—in fact, every scheme involving the county in a new expense, whether by increased salaries or laying out improvements here or there—should be first advertised in the leading journal of each party in the county—advertised once a week for four weeks. Here is due notice to all concerned; and the proposers should pay for the advertising before they shall be allowed to come before the board; and then, when you come to the board, in my judgment, we should require the votes of three-fourths of all the supervisors elected to be recorded in the affirmative to pass such a measure. You will have an abundance passed even at that; you will find supervisors' legislation in excess, even if you require three-fourths of all the members to vote for such measures, even with the requirement of publicity for four weeks before it can be considered in the board. That will be a real veto, costing the people nothing; costing only the projectors and schemers the expense of proper advertising, for which money should be lodged with the chairman of the board of supervisors (whom I trust the board themselves will elect), who shall require and direct the publication of a proper notice in the leading journal of either party in the county for at least four weeks before it can be taken up and passed, and then only upon a record of the yeas and nays, by the vote of three-fourths of all the supervisors elected. Give us these checks, and you have some security against improvident and mercenary legislation; but in this county supervisor you have none, in my judgment; and I trust the committee will vote to strike him out, and then provide real, substantial guaranties against the legis-

lation we deprecate, in the later sections of the article.

Mr. BICKFORD—In the committee it was strongly felt that the board of supervisors would be a very dangerous depository of legislative power, consisting as it does of only one house, no second house to be a check upon it, unless there was lodged in some officer a veto power. I believe the committee were nearly unanimous on this point, with the exception of one or two members, who thought it might not be very dangerous; but it was the prevailing sentiment of the committee, and we cast about to see on what officer that veto power should be devolved. My own individual view was that it should be devolved on the sheriff of the county, and that the sheriff should be made a much more important officer than at present. I believed that he should be something like an English sheriff, a Scotch sheriff; that we should make him a judicial officer and a local executive in the county, and charge him with the execution of the laws in his county, and give him the veto power. But there was felt to be a very strong objection in the minds of some of the committee to that measure, and therefore a compromise was made. Some wanted the county judge vested with this veto power, and we have proposed to create this county supervisor, which seemed to be less liable to objection than any other scheme which presented itself. Now this officer, elected by the people of the whole county, sitting as chairman of the board, vested with a qualified veto power, will necessarily be an officer of great influence on local legislation. I cannot conceive it will be otherwise if the choice is sufficiently judicious and properly made, as we must presume it will be. Now, with regard to the effectiveness of the veto power which is here provided for, I beg the gentlemen of the committee to consider one moment, especially the gentleman from New York [Mr. Opdyke], who makes the objection that the veto power is not sufficiently operative or strong. As a majority of the board necessarily constitutes a quorum to do business, the requirement that it shall be passed by a majority of all elected is really more effective than the requirement that it shall be passed by a two-thirds vote. To illustrate: Take the county of Jefferson, for instance, where there are twenty-two supervisors, a majority of the board to do business is twelve, while two-thirds of a quorum are only eight. Thus a vote of eight supervisors might pass the measure, but if you require a majority of all elected, it takes twelve supervisors to pass a measure, and if there shall be eighteen present (and it is perhaps not to be expected that the average attendance will exceed eighteen out of twenty-two), two-thirds of those present would be twelve, and that number is a majority of all elected. We considered this matter, and we considered it would be a more efficient check to require a majority of all elected to the board than it would be to require two-thirds, as bills frequently pass by much less than half of the members elected, and this requires a majority of the whole after the president's objections have been stated fully, and the measure reconsidered afterward. I trust, Mr. Chairman, that this provision will be retained. At all

events, if gentlemen have schemes to make this veto power more effective, it is not to be made by striking out the matter here, but by increasing the effectiveness of the veto in other sections.

Mr. WAKEMAN—It seems to be considered we are to confer additional power on the board of supervisors, that they are to enact certain laws which the Legislature, under the present Constitution, are to enact or have power to enact. In order to pass a law under the present Constitution, it requires the action of two branches of the Legislature. One is competent to act as a check upon the other—that is the design—and the Governor as a check upon the whole. Now, it seems to me it is important that we confer some power on some officer that shall have some check upon the board of supervisors. Whether you call him a county supervisor, or some other name, he should have power to veto the acts and doings of the board of supervisors, and particularly so if we confer upon the board of supervisors this additional legislation. So far as expense is concerned, in my humble judgement, the expense will be less than it is at the present day. The county supervisor will be elected in reference to his qualifications for that particular office, and by making himself familiar with the duties of that office, the action of the board will be facilitated in such a way that the expense would be absolutely less than it would otherwise. Of course, it might be said that the chairman of the board of supervisors might perform all this duty, but he is elected from the locality, from a town, and to give him the veto power would hardly be consistent with the duties of the board of supervisors, and, therefore, it seems to me that this very proposition which encounters the opposition of the gentleman from Westchester [Mr. Greeley] is one that should be retained in some form. I care not particularly whether he shall be a county supervisor or a county judge, or what other officer, but I say there should be some officer whose special duty it would be to look into and revise all the acts passed by the board of supervisors, or at least for the supervision of it; and in the absence of any other proposition being introduced here, I shall vote for the report of the committee on this particular point.

Mr. CONGER—I can hardly understand the nature of the objection made to the creation of this officer as the permanent president for a year at least, of the board of supervisors. If I understand the gentleman from Westchester [Mr. Greeley] he objects to the expense of its creation. Now I suppose that this officer would not have a much higher rate of compensation allowed him than an ordinary supervisor, which, at the present rate, is three dollars a day, during the time in which services are actually rendered. And as the board of supervisors rarely sit except in very large counties, more than twenty or thirty days in the year, it is not easy to perceive that if the office is to be of any practical value, the cost would more than balance its real worth. Still it may be worth while to have the opinion of the chairman of this committee, who has probably investigated the comparative benefit and expense to the people of the State, in the creation of this office. To my mind, as at present advised, the

expense seems a mere trifle. Mr. Chairman, considering that in the report that a week since was passed, we voted with only a few dissenting voices to incur the expense of increased salaries for members of the Legislature, amounting to some one hundred and thirty odd thousand dollars, or the interest at five per cent on nearly two and one-half million of dollars of the State debt, it seems to me to be a beggarly economy to come here now and say we will not create an office which may cost the people of the county, at the best, some five dollars a day for an average service throughout all the counties of the State, at best, from thirty to forty days in each. The reasons which are given by the chairman of this committee and his associates, seem to me to be good and substantial reasons why this office should be created. If the local boards are now to be invested with new power of legislation, if the creation of new rates and the adoption of new measures that are of local interest to the people, is to be taken away from the central authority at Albany, and transferred to the centers at home, there seems to me to be very good and sufficient reason why the people of the whole county should be represented, as well as that the whole people of the State be represented in a chief executive office. The power of the veto residing in a supreme executive magistrate is just as essential to the liberties of the people in this age as it was in the days of the Roman Republic, when the Tribune of the people sat at the door of the Roman Senate, and though he sat on a bench, his simple voice, raised with the word "veto," annulled all hasty, crude, and unfair legislation. So it would be here; if you desire to give the county boards increased facilities and increased power for legislating over the local affairs of the county, you should have some one person, I do not care who he is, or what his name is, who should be vested with plenary authority, representing in his person all the power of the people of the county against the combinations of those who represent towns and subordinate interests. Nevertheless, I should like to know whether I am in error in supposing that the expense of this office, if created, would be a mere bagatelle in the annual budget of the county.

Mr. SMITH — With the indulgence of the committee I would like to make a suggestion. In reply to the gentleman from Rockland [Mr. Conger] I would say that the provision is that the Legislature shall fix the compensation, and as those boards will sit but a few times, probably, in the course of the year, the expense could not amount to much, and it must necessarily be a very small matter. I wish to make a suggestion or two in relation to the remarks of the gentleman from Westchester [Mr. Greeley]. He thinks that by giving publicity to the acts that are to be passed by the boards of supervisors, it would serve as an efficient check upon improvident and corrupt legislation. Now I certainly have no objection to a provision of that kind, and indeed I do not know but it might be a very good one. It can be added, however; it is not in conflict with this provision which is now under consideration, and if this be considered

favorably by the committee, and the gentleman from Westchester [Mr. Greeley] shall propose a plan of that kind, I see no objection to it. The gentleman from Westchester [Mr. Greeley] suggested that the veto would not form an efficient check for two reasons. First, that it does not provide for a two-thirds vote to pass an act over the veto; that the provision is for a majority vote instead of two-thirds. I have no objection to two-thirds if the Convention shall think that would be more efficient. It is also suggested by him that these corrupt schemes are arranged outside. I know they often are, but does that afford any good reason why we should not give all the protection possible—that we should not provide laws and all the checks possible to prevent corruption? I apprehend not. Suppose you take the city of New York; the board of supervisors of that city, it is said—I cannot say with how much truth—is sometimes used for corrupt purposes, that schemes not very creditable are passed through that body. Suppose the gentleman from Westchester [Mr. Greeley] should sit as the chairman or president of that board with the veto power, and that a corrupt scheme should pass, would he not at once veto it? And would not that veto form a check to the board? Would it not prevent that board from voting away money at night, and putting their action beyond the reach of an injunction by appropriating the money before morning? It seems to me it would afford a very efficient check, and the expense, which is the only objection made to it, must be nothing in comparison to the expense that would be saved to the people by the creation of this office. I desire to say, further, that as much as I feel the necessity of transferring this local legislation from the Legislature to the board, I would not dare to transfer it without providing some check upon hasty and corrupt legislation. I shall feel compelled, if this is stricken out, to vote against any transfer of this local legislation, because it is dangerous—it is giving legislative power to boards which they do not possess at present, except in a very limited extent, and provides no check upon their power. If the gentleman from Westchester [Mr. Greeley] casts his eye over the section providing for the transfer of this power, he will see that it is proposed to give boards very extensive power, and I would not dare to devolve it upon them without providing some check. It seems to me, therefore, that the whole plan must fall unless this or something similar to it shall be provided.

Mr. REYNOLDS — If this Convention shall adopt the principle proposed by the committee, for transferring the local legislation from the Legislature to the county; it seems to me some such officer as that proposed by the committee is absolutely necessary. In our county we have thirty-three supervisors, fourteen of whom are elected from the city, and the balance from the country. The strife with us always is to control the president of the board, who has the appointing of the committees, and you will find the county treasurer, and the sheriff and the county clerk all combining to get committees appointed to examine their several accounts, that would look with as favorable an eye as possible upon them—and

their effort is to control the appointment of committees in the interest of these officers. There is no veto power, nothing to prevent persons exercising the power of appointing committees, and the result of it has been very disastrous to our county. In more than one instance, the county treasurer has succeeded in covering up defalcations by securing the appointment of committees favorable to his interests, by that sort of combination, which has brought our county into heavy losses. The county treasurer preceding the present incumbent was a defaulter to a large amount of money, some forty or fifty thousand dollars, I believe, which could not have possibly occurred if there had been a committee appointed to examine his accounts who really did their duty. It seems to me that if this plan is to be adopted, some officer should be provided by law or by the Constitution who shall have a veto power, and stand outside of all the town influences and cliques that may be got up in the boards of supervisors of our State.

Mr. WICKHAM—It seems to me to be conceded that the necessity for creating the office of county supervisor depends upon the question whether this power of legislation is conferred upon the board of supervisors. I trust before we get through with this report these increased powers which are enumerated in the report will not be thus conferred. We have already adopted an article declaring that all legislative power shall be vested in the Senate and Assembly, and it seems to me that if any local legislation is devolved upon the respective boards of supervisors it should be confined to those subjects and to those matters to which the power may be conferred by the Legislature, as provided in the present Constitution. It seems to me that when we adopt this system for the purpose of avoiding the evil of excessive legislation by our State Legislature, we are in great danger of multiplying the evil of local legislation when we confer the exclusive power upon a larger number of local bodies. There is another objection to this provision. The State Legislature is organized with relation to a fair representation of the inhabitants. Each county is represented in proportion to the number of its inhabitants. If you look over the tables of the population of the towns in the different counties, you will find there is a very great disparity in that respect. In my own county there is one town that contains a little over five hundred inhabitants, and there is another town which contains a population of some ten thousand. It is true there is a section contained in this article which provides for equalizing the representation, but how can it be equalized with such an inequality of population in the respective towns? I find that in the county of Ulster there is one town which has about five hundred inhabitants, or something like that, and another town which has some seventeen thousand. How can you equalize the representation without creating boards which will be quite too large for the purposes for which they are required? There is another objection to the creation of this office of county supervisor. It is contended that it is necessary we should have this officer to exercise the veto over the power of the board. I fear, if this power is ex-

ercised by an officer chosen as this county supervisor is to be chosen, that there will not always be a judicious exercise of the veto power. He is necessarily a politician. Supervisors of towns are not now elected so much from their activity in political affairs as from the fact that they will best represent the interests of the respective towns. But when you come to elect a county supervisor upon the county ticket, he will be nominated with respect to some political question, and he will always be an active partisan on the one side or the other, just as the political majority happens to predominate in the county. I trust, Mr. Chairman, that this constitutional provision, which cannot be repealed by the Legislature, conferring this large power of legislation upon the board of supervisors will not prevail. I trust also that this provision in relation to the election of a county supervisor will fail. Now gentlemen have said, that so far as we had any indication of the wishes of our constituents it was to take away from the State Legislature all this power of local legislation. I do not so understand the indication of the popular will. My own impressions are that it was the desire of the people that the powers of the Legislature should be restricted to the enactment of general laws, and when it is thus restricted I think we shall have accomplished everything we are desired to accomplish in that direction.

Mr. VEEDER—I move to amend section one of this article by substituting section 1 of article 10 of the present Constitution.

The SECRETARY proceeded to read the section, as follows:

"SEC. 1. Sheriffs, clerks of counties, including the register and clerk of the city and county of New York, coroners, and district attorneys, shall be chosen by the electors of the respective counties once in every three years, and as often as vacancies shall happen. Sheriffs shall hold no other office, and be ineligible for the next three years after the termination of their offices. They may be required by law to renew their security from time to time; and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff. The Governor may remove any officer in this section mentioned, within the term for which he shall have been elected, giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense."

Mr. BARKER—If the gentleman from Kings [Mr. Veeder] will permit me, I move to strike out all after the words "county clerk," in the third line, and insert in lieu thereof section 1 of article 10 of the Constitution, after the word "coroners." Then it will read substantially as this section does, and will be debatable.

Mr. VEEDER—I accept that amendment, which virtually brings in the present article of the Constitution. I have looked over somewhat hastily the article as reported by the committee, and I find in it, to my mind, several objections. The committee will observe the section provides, as reported by the committee, for the removal of all officers enumerated therein by the Governor, upon

certain charges being preferred and sustained, and provides for the appointment by the Governor of a person to perform the duties of the position during the vacancy. It nowhere provides for the election of an officer to fill the unexpired term. Under the present Constitution, although the Governor may remove this class of officers, his appointments only extend until after the next general election. The people elected a new officer to fill the unexpired term. For that reason I much prefer the language of the section as it now stands in the present Constitution. These officers, it says, shall be chosen by the electors of the respective counties once in every three years, or as often as vacancies shall happen. Now we may suppose a case of this kind. A person may be elected to the office of county clerk. He may enter upon the discharge of its duties for the period of a week. He may, from sickness or disease, die, and the office becomes vacant. If such a case should occur, the Governor is required by the proposed article to fill the office for the unexpired term. The Governor is now, by the existing Constitution, empowered to fill the vacancy until the next general election. I submit that is quite sufficient. At the next general election the people now have the power to elect an officer to fill the unexpired term. I am also opposed to the article as proposed, because it excludes the people from the right to select a register for the city and county of New York, also a register for the county of Kings. I shall at another time ask leave to offer an amendment so as to provide for the election of a register in the county of Kings. It is very necessary that those offices should be distinct and separate offices, and that a register in the county of New York and a register in the county of Kings should be elected. Under the article reported by the committee, you would be confined to the election of a county clerk. But beyond that I am not willing to admit the propriety of taking from the people the right to select a district attorney in the several counties of the State. In my judgment it is quite as safe to leave it in the hands of the people to select a district attorney as it will be to appoint him. I have heard no argument presented here showing why this change should be made. No petition or memorial has been presented to the Convention asking for any such change. And why the people should be deprived of the right to select an official of that importance I am at a loss to understand. I have not heard any complaint made here against a single district attorney, neither have any charges been preferred against any one of the present incumbents. It will be further observed that the Governor has absolute authority conferred upon him by this article to appoint the several district attorneys. It does not provide that the Governor shall nominate, and, by and with the advice and consent of the Senate, appoint, but it gives the absolute power to the Governor to appoint them. I am not in favor of that. I am in favor of all officers who are for the present elected by the people continuing to be so elected. It seems to me very inconsistent for us to advocate the extension of the right of suffrage and at the same time take from the people the right

to select their officers. I cannot understand that we are extending the elective franchise when we are endeavoring to take from the people the privilege of electing their officials. Does universal suffrage mean the giving of the right to vote to all citizens regardless of color, and after you have extended to them this privilege to take from them the right of choosing their officers? Can it be advantageous to the public to allow them to vote, but when they come to the polls to cast that vote they find there is hardly any officer to vote for. I cannot agree with those gentlemen who are determined to make so many radical changes to the present Constitution. It would, in my judgment, be much better for us to confine ourselves to apparent defects in the present Constitution and at the same time preserve as much of the old instrument as may be possible.

Mr. BARKER—I desire to see section one of article ten in the present Constitution substituted for the one referred to by this committee. The committee recommends some three or four changes, neither of which can I support. The chief objection that I have to the section and system, as reported by the committee, is, so far as it takes from the people the right to choose their district attorney, and gives that power to the Executive of the State without the concurrence of the Senate. I am opposed to concentrating and aggregating in the executive department of this State the appointing power. There is a disposition on the part of many members of this Convention, to aggregate in the Executive higher functions than he now enjoys. It is true the office of district attorney is not a separate and distinct department of the government to such an extent that it is a violation of principle to appoint him. The workings of twenty years have been satisfactory to the people and to the courts, and has demonstrated that the district attorney should be elected as a county officer. Again, it is apparent that wisdom and necessity will confer upon the Executive and the Senate the appointment of certain other officers of the State whose duties are more local and more specific than those of the district attorney. This will be an aggregating of the power of the Executive which will be unwise. What may have led this learned committee, whom I respect so much, to make this report I cannot understand, for, if my memory serves me right, each and every one of these learned gentlemen less than a week ago voted against large senatorial districts, and urged as the very reason that it was building up an Albany junta which they opposed. And now they recommend the taking away from the people an office which is now elective and putting it upon the Executive without consulting the Senate. I would like to have had some reason assigned by the committee for their report.

Mr. KINNEY—I would like to call the attention of the gentleman to the fact that I and some other gentlemen on this committee, were opposed to the appointment of district attorneys.

Mr. BAKER—I am very glad to hear that my learned friend who sits so near me, is altogether right on that proposition. Now it is also recommended in the report, that the sheriff shall not be eligible to hold office of deputy or under

sheriff for the term succeeding the expiration of his incumbency. I know of no good reason why he should be excluded from taking that office from his successors. It in no wise interferes with the discharge of the unexecuted business that has come into his hands during the whole term. I think it gives him opportunity to favor the execution of his own processes. The privilege to take the appointment from his successors should be continued. Then, again this section recommends that the Governor shall only have the power of removal of the county officers mentioned in the section, in certain specific cases. I think he should have unlimited power for every good cause, as it shall appear to be sustained, to remove these county officers, first giving the delinquent person a copy of the charges, and an opportunity of being heard in his defense.

Mr. HALE—I hope the amendment proposed by the gentleman from Kings [Mr. Veeder] will not prevail, for the reason that it proposes to leave the office of district attorney an elective office. If the experience of the last twenty years has taught us anything, Mr. Chairman, I think it is the folly of making that, of all others, an elective office. The duties of the district attorney are such as ought to make him a terror to evil doers. His duties are such that, if faithfully performed, it is frequently a matter of necessity with him to offend many men who are influential in politics, many men who control votes. The district attorney now, in the performance of the duties of his office, is often tempted to hesitate whether he shall do his duty, and do it faithfully and well, because he will thus forfeit or prejudice his chances for re-election. I would remove from him the necessity of choosing between such alternatives. I would put him in a position where there shall be no consideration to swerve him from the path of duty. I would put him in a position where, if a man is indicted for riot or assault and battery, or in violation of the excise law, he will not be obliged or be tempted to consider, as very many district attorneys now do, whether by prosecuting this man faithfully and diligently he will forfeit his chances for re-election. Members of this Convention talk about taking away the rights of the people. The right of the people is, and their demand is, that the duties of that office shall be performed faithfully; that the laws shall be enforced; that crime shall be punished. The people do not care for the privilege of voting for district attorney. The people, whose wishes we should consider, want a district attorney who will perform all his duties, who shall have no temptation held out to him by the laws of the State to swerve from the line of his duty. If the people can secure that, they will be satisfied. It makes very little difference with them whether they vote directly for this officer, or whether the Governor of their choice appoint him. Perhaps it would have been better if in the second section of this article it had been provided that the appointment by the Governor be by and with the advice of the Senate. But that section can easily be amended, if thought best, when we reach it. But for the reasons which I have given, reasons which I am sure we have all felt and know to be substantial, I trust no

amendment will be adopted which leaves the office of district attorney elective.

Mr. LARREMORE—I differ with the gentleman who last addressed the Chair in opposition to the amendment offered by the gentleman from Kings [Mr. Veeder]. I think he entirely misapprehends the wishes of the people in this respect. If there is any one office in the county in which the people feel a peculiar interest, it is that of the office of district attorney. The committee have told us, in the remarks which they have added to their report, that the reason for changing the existing law in this respect, and making it an appointive instead of an elective office, was that the district attorney is not a representative officer. Mr. Chairman, if the lawyer is ever the representative of his client, then is the district attorney the representative of the people of the county. The gentleman has said that he cannot discharge his duty as fearlessly in prosecuting a defendant to the full extent of the law without jeopardizing his chances for re-election. That is virtually saying that the majority of the electors of the county sympathize with crime. I am not prepared to accept such a conclusion. I believe the district attorney should be elected by the people because he is a representative of the people. He is their law-officer; he represents them by virtue of his office. I think we show too little confidence in the source from which all confidence is derived. Will not the question of partisanship arise in an office, even if the holder of that office be an appointee? The same may be said of the sheriff. How can he fearlessly discharge his duty without making enemies? I trust the amendment of the gentleman from Kings [Mr. Veeder] will prevail. I think it would be most acceptable to the people; they are fully qualified to say who shall represent them in all local matters. If the district attorney of any county fails to discharge his duty, the people of that county are the first to realize and suffer from the neglect. We show a distrust of them in depriving them of the right to select their own legal adviser. This officer is not a State officer! Why, then, should he be appointed by the Executive of the State? His duties and jurisdiction are local, and, while representing the people of the State, he is restricted in the discharge of that duty to the limits of a particular county. I think the experience of the past has clearly shown us that no change is necessary in reference to this officer, and that the interests of the public will be best subserved by retaining the existing provision of the present Constitution.

Mr. GOULD—I was in hopes that the Convention would be willing to leave for the present the consideration of this question of the appointment of the district attorney. The Committee on the subject of the Prevention and Punishment of Crime have already had that matter under consideration. I shall be very glad if the discussion of this matter is left until the coming in of the report of that committee. Now I do not suppose the committee on that subject have the power of elucidating the question in a superior manner to the very able committee who has already made a report. I desire it should be left for this reason: Under a resolution of this Convention inquiry was

made of the different county treasurers and county clerks, in relation to matters which will very fully illustrate the operation of our laws, in relation to district attorneys. Very curious answers are already coming in. These investigations are not yet completed. I think the Convention will be in a much better condition to decide this matter of the appointment of district attorneys after they shall have been fully informed on the subject by the coming in of this report. I would be glad, therefore, when we come to this section, if the Convention strike it out for the time. I suggest to the gentleman from Kings [Mr. Veeder], whether he will not withdraw so much of his amendment as applies to district attorneys, in order that the Convention may consider it in the lights which will be afforded by the information coming in.

Mr. GREELEY—I do not believe this Convention needs any additional light on this subject. The gentleman who proposed to strike out, and those who opposed the proposition, understand this matter perfectly well. The State has very important, and in my judgment, very beneficent laws, which forbid gambling, brothel keeping, and illegal rum selling. Now, the effect—I will not say the purpose—of this amendment is to allow these laws to be disregarded and openly defied in the city of New York and the county of Kings: to allow the keepers of brothels, the blacklegs and law-defying rum-sellers, to elect their own district attorney, and then they will openly defy the law. The facts which the gentleman from Columbia [Mr. Gould] proposes to give us will abundantly indicate this—will show this a little more clearly than some of us now know it, but will only confirm what is in every man's mind at this hour. We all know that there is a local public sentiment in those counties adverse to the enforcement of laws, and in favor of general license and profitable pandering to popular vice. If you make this office an elective one, and so choose the district attorney, everybody will do what he has a mind to, so far as he does not cut anybody's throat nor absolutely and directly pick anybody's pocket. Those who vote here should understand it. The gentleman who now holds the office of district attorney in New York was elected when he was called a republican. I opposed him then, although he had the regular republican nomination. But the influences were all potent to elect him in defiance of the regular democratic nomination, and despite of the reform city nomination given to a most estimable member of this present Convention, who was strongly supported but defeated. He was a candidate of the potent influences which control in the politics of the city of New York. And so, being a democrat or a republican had nothing to do with his election. Those influences prevailed, and they will prevail. I do not believe the people of New York are corrupt generally, but there is an enormous influence there, composed of and directed by men who make their money out of popular vices, one way and another, and who want a lax and easy administration of law. Let district attorneys be chosen by the people, and thieves and profligates will choose their own district attorney. They care nothing for politics.

They look to their personal ends. If no party presents a candidate to suit them they will nominate one, and they can thus choose their man, whether from one party or the other. I think it is not necessary to have new facts submitted to us. Mr. Chairman, you know there have been several indictments found for corruption in this hall while you were a member of the Legislature—gross, flagrant corruption. Not one of those indicted was brought to trial by these elected district attorneys. I think indictments were found not only here but in Greene and Rensselaer. Why they were not tried I can guess, and so can you.

Mr. M. I. TOWNSEND—Will the gentleman allow me to ask him a question. It is only to vindicate the character of our district attorneys, who might possibly be elected. No indictment has ever been found in Rensselaer. One was transferred from Albany to Rensselaer. A New York judge came here; there was some whispering one morning, and nobody has ever heard of it since—not a word.

Mr. E. BROOKS—I would like to ask the gentleman if he believes these district attorneys would be any better, any more moral men, if they were appointed by the Governor, than if they were elected by the people?

Mr. GREELEY—I certainly do believe that the Governor, being directly responsible for every one of these district attorneys, would use great care in their selection, and scrutinize their actions closely. If there was any blame we would lay it right on his shoulders. I do not want any Senate confirmations. I want to hold the Governor responsible for every one of these district attorneys. "Why, sir! your district attorney in this county does not try these criminals! We call you to account!" That is what I want.

Mr. GERRY—I would like to ask the gentleman whether, under the present system, if the Attorney-General has reason to believe in the corruption of any local district attorney, if he has not the right and the power to come into court and to prosecute the case before the jury himself.

Mr. GREELEY—I cannot say what the power of the Attorney-General would be: but this I mean to say, that there are thousands of good indictments that have lain untried for ten or twelve years, and that not more than half of the indictments found in New York are ever brought to trial. It seems very clear that those who have friends and money are not half so likely to be brought to justice as those who have none. This state of things I wish to put an end to. I wish to look right at the man in that [Executive] chamber whenever there is a flagrant case of delinquency, on the part of the district attorney. I wish to hold up the Governor, whoever he may be, before the people, when I see this flagrant violation of duty on the part of the district attorney. I cannot do it now. I can do nothing but submit. One word as to the original proposition which I have made here. I have objected that this county supervisor amounts to nothing, practically. But we are told he may be made to amount to something. Now, I object again, if this county supervisor happens

to be on the side of loose legislation, what is our remedy? I propose that you allow these county boards to legislate only in case three-fourths of all the members sustain that legislation; and if they are unanimous, and record the yeas and nays, placing each supervisor on the record, I am content. This county supervisor is not likely to be any better than a county clerk. Suppose a county supervisor happens to say "Yes," or not to say "No?" Some bad measures go through. Where is your remedy? I wish to have it so that a political majority in a county will not be enabled to raise the salaries or allowances of their county clerks or their treasurer. I wish to have it so that the minority party can object, and thereby stop the increase of salaries, or by any kind of objectionable affirmative legislation whatever. I argue that this proposition now before us, is a seeming, a *seeming* security to the people—one which really means nothing. I wish it stricken out, in order, when we come to the second section, we may provide real securities.

Mr. SCHUMAKER—I can only answer for my own county, and from what I know of history concerning the city and county of New York, "profitable pandering to popular vice" as the gentleman from Westchester [Mr. Greeley] terms it, is not the business of the district attorneys of the counties of New York and Kings. I should gather from the remarks of the gentleman from Westchester [Mr. Greeley] that it is their present duty to sustain low rum holes, houses of prostitution and gambling houses. Now, I have known in my short life a great many district attorneys in New York and a great many district attorneys in Kings county, and I have known of no profitable pandering to popular vice in Kings county, and the only profitable pandering to popular vice that ever was known, or rather that I ever heard of was in the city of New York, and by a district attorney who is now a great reformer, and who was appointed by the Governor. He was an appointee, and this common rumor may be only a slander upon him. I know that the district attorneys of our county have been high-minded and honorable men, and this remark is applicable both to those who were appointed and to those who were elected, who went into office with independent fortunes and accumulated no money while in office. I have known most of the district attorneys who have held office in New York city, and can bear witness to the fairness and fidelity with which they have performed their duties, especially those who have been elected. I have never heard of Mr. Hall or Mr. Waterbury or Mr. Sweeney accumulating any money from their official positions. Mr. Blunt was district attorney of the city and county of New York, and he amassed no fortune. I attribute personal feeling as the cause of my learned friend, Mr. Greeley, making these bold assertions against the present district attorney of the city and county of New York. He and Mr. Hall hate each other cordially, and each take every opportunity that occurs in the press of the day, and in public and private, of soundly abusing and ridiculing each other. But those who know Mr. Hall intimately differ from the gentleman in relation to his fitness and efficiency as a public officer,

and claim him to be a gentleman in all the walks of life, a good lawyer and an experienced and able district attorney. The present able district attorney of Kings county, Hon. S. D. Morris, deserves no such calumny. His reputation throughout the State is too well known as a successful and indefatigable prosecutor of evil doers to need any encomium from me. He is sure to convict all the guilty (provided the police catches them and keeps them until he can do so). His conviction of murderers within the last few years is unparalleled in the world's history. He is possessed of a bold and defiant spirit, and when he believes he is right he cannot be diverted from doing his duty from fear or favor. I will cite an instance. Years ago he was one of the counsel employed by the liquor dealers to oppose the "Maine law," as it was called. When the present excise law was passed he was district attorney, and those men whose interests he had advocated successfully as an attorney came to him and asked his opinion as to the constitutionality of such law. He said it was constitutional and stuck to it, and the court of appeals sustained him, but his former old friends howled and raged about him. But he was unmoved, and continued to prosecute for violations under such law. Is there any more chance of making a good man out of a bad man by appointing him. The experience of the past shows that there are just as many bad men appointed, and more too, than there are elected; for if a man in a community is a very bad man, no one finds it out sooner than the people. If a man has a reputation for being a scoundrel, it is whispered about throughout the town where he lives, and the whole county. The people, when they go to the polls, vote according to the reputation of a man, whether he be good or bad. I would say to my friend from Essex [Mr. Hale] that if a district attorney expects to be re-elected in any county he cannot be re-elected by not doing his duty, and not prosecuting men for murder or robbery; he can only be elected by doing his duty and doing his duty well, because people who are interested in having crimes punished, will look to it to see that their prosecuting officer does his duty in every particular. In our county for the last twenty years (although I have had the honor to occupy that position once myself), there have been very few murderers who escaped, and those who have been convicted, have been properly convicted. The gentleman cannot point his finger to one case in Kings county, where the district attorney there has been guilty of "profitable pandering to popular vice," in any particular! I defy him to do it—he cannot do it. I will give the gentleman [Mr. Greeley] the opportunity now. I'll permit him to interrupt me to do it. He is silent; that shows he cannot state one case. By appointment by the Governor, you do not remove the district attorney at all from any temptation to profitable pandering to popular vice. Do you?

Mr. GOULD—It appears that in the last ten years \$427,000 of estreated bail has accrued in the city of New York, and only \$39,000 has been paid into the public treasury. Will the gentleman account for that?

Mr. SCHUMAKER—I will tell you. There is a great deal of straw bail in the cities of this State. But, do not lay that to the account of district attorneys. Judges take bail—district attorneys do not. By the Revised Statutes, two good freeholders can become bail for any man. Two men appear before the judge and he takes the bail. He notifies the district attorney that the prisoner is in court, and desires to give bail. The district attorney examines the persons and finds out they are A, B or C, owning real estate in different portions of the city, and they swear to property sufficient to make them competent bail, so the prisoner is bailed. Then when you come to prosecute the bail bond, sometimes you find that A, B and C swore falsely, and were men of straw. This is what we call straw bail.

Mr. GOULD—Why was it, that from the year 1857 to the year 1861 not one single dollar was collected for estreated bail in the city of New York?

Mr. SCHUMAKER—I suppose the money could not be made. That is not such a singular fact. In some counties in the State there never has been a dollar collected of estreated bail. Sometimes courts direct that recognizances shall not be prosecuted; sometimes, after bail has been forfeited, the bondsmen bring the criminal into court and deliver him up, and he is tried and convicted. In such case his bondsmen should not suffer. I do not believe that a bail bond has been prosecuted and the money collected upon it in the county of Kings, in ten years. I think it is almost impossible to collect money upon a bail bond if the party does not appear for trial. There is always some rascality about it, or some personation of parties who are good, by parties who are bad. In nine cases out of ten it is found the party who gave the bail bond is utterly bankrupt, or that he is not the person he represented himself to be. I remember a case of this kind. A celebrated burglar was arrested in Brooklyn, and two men appeared and offered to go bail for the prisoner. One represented himself as living in Elizabeth street, and the other professed to live in the Bowery, possessed of fine real estate in their respective places. They were examined to the satisfaction of the county judge; they were taken as bail. Upon the trial the defendant did not appear. The parties who went bail were looked up. Men were found in each of the places, in Elizabeth street and in the Bowery, who represented the same amount of property, as was sworn to by those who appeared before the county judge, but they were different persons altogether. The persons who went bail were "straw bail," who personated those two men from the fact of their having entire knowledge of their property. They could not be found. When a man gives good bail he generally is present at the trial. He stands his trial, and if he is convicted there is an end of it. That may be the reason why prior to 1867 there was no money paid on estreated bail bonds in the city of New York, from the fact that the worthless straw-bail bonds were the only ones upon which judgment had been obtained. Before I was interrupted I was about to say that of all places on the face of the earth, where a district attorney

should be appointed from, this executive chamber here is the very worst and the very last place. He will have all sorts of visits from all sorts of persons, from Governors' private secretaries and persons hanging around that chamber. They come to the district attorney and say, "Do you know John Doe, Mr. District Attorney?" "Yes, I know John Doe." "Well now, has not he been in State Prison long enough? Is not the policy of the law 'reformation'?" "The Governor would like to do it, but your letter is not quite strong enough. Could not you make it a little stronger?" Now this comes generally from the officials and those who hang about the Governor. How will that talk answer to the person who is appointed in that room? Would it not have more effect than it would to go to a man who is elected by the people? There have been almost weekly missions from that room. I do not say it is so now, because I have no intelligence from there now. But from the old executive chamber of this State there were weekly trips to the city of New York and Brooklyn to ascertain whether something could not be done for poor Peter Dawson or for Four Fingered Jack, or poor pickpocket this, or pickpocket that. Now, if you have your district attorney appointed in that room, I ask you, and this Convention, whether there is not room for grave fears that the district attorney will be imposed upon by the satraps and hangers-on of the executive chamber, in relation to all sorts of letters that a district attorney may write. For God's sake don't let the pardoning power make and unmake your district attorneys.

Mr. GREELEY—I present this case: There is a local sentiment hostile to a general public law of the State. Now, I wish the gentleman would tell us by what means that law is to be executed against that local hostile sentiment, and he secure his election or re-election. Will not the district attorney have his hands practically tied so he will do nothing?

Mr. SCHUMAKER—I will tell the gentleman. Let the Governor send there the Attorney-General of the State, who is a sort of general supervisor of its criminal interests. If there is a trial for murder in some portion of the State, let the Governor send the Attorney-General to conduct the trial. It always has been done; and I suppose when occasion requires it will be done again. I was about to say, before I was interrupted, that this influence pervades and embraces every action of the district attorney. I have not seen much of it, but when the district attorney is appointed, there is no independence carried with it at all. How is he appointed? In the first place, the general committee has resolved that Peter Kernips shall be district attorney of a county. How many are there of this general committee? Forty or fifty. He has to make his bow to them. One lives in this place, another lives in that place, distributed throughout the whole county. There are other leading and special politicians who are about Albany all the year round, who know everything about Albany which has money in, and who have influence with the Governor. They live in the county where the district attorney is to be appointed from; and they have something to say. He has to ask their influence in getting his appointment.

He has to make his very politest bow to these gentlemen—gentlemen of the “third house” I mean. There is a member of Assembly, two or three of them perhaps. They are acquainted in Albany. They know his Excellency, the Governor. They can make or remove a district attorney. They know everything going on about Albany. If there is any chance of “making” as they call it—I believe that is the term used in Albany in the winter time) in getting a murderer pardoned they will endeavor to get it done because of their relations with the Governor and make the district attorney go for it; or if he will not they will try to get him removed on some petty pretense; and if there is a burglary committed or a murder, the district attorney has to go and make his polite bow to all sorts of men who have influence at the capital—the members of the general committee, the supervisors and board of aldermen—and ask their advice in relation to the prosecution. If he sits in his office, if he is preparing a case, in will come some of these petty politicians, who are in the habit of getting a living about the city of Albany—job politicians—who say, “I don’t want you to try this man so and so. We don’t want you to try this man at all. We have heard something about you; you may have charges made against you in Albany. You had better look out for yourself before you try this man.” I would rather have an officer elected by the people. You can see how, among the most of the people in the county in which he lives, he is secure and independent. If he is right they will always sustain him. If he is improperly removed he can be re-elected. The Governor of the State once removed the recorder of the city of New York. The people of the city took him up and elected him mayor. You have a district attorney. If he is appointed by the Governor he is constantly in fear and trembling. The party who makes him can unmake him on the slightest pretense. The making and the unmaking is performed by one man. The gentleman says this one-man power is to make and unmake the prosecuting officer in every county in this State. I hope this amendment will be sustained by this Convention, leaving the matter exactly as it is. In relation to the trial of indictments, I will say to the gentlemen, there have been more indictments tried under the present elective system by the district attorneys of the State, so far as I can obtain information, five-fold more, than there used to be when such officer was appointed.

Mr. SILVESTER—I hope the amendment of the gentlemen from Kings [Mr. Veeder] will not prevail. Without expressing at present my views with respect to other questions which have already been discussed in connection with the report of this committee, I am opposed to the amendment now under consideration because its adoption would change the section proposed by the report of the committee, which recommends the appointment of district attorneys in place of their election. I had hoped that the discussion of the question, with regard to the proper mode of providing for filling the office of district attorney might have been postponed until the Committee upon the Prevention and Punishment of Crime had been

able to present their report and favor the Convention with their views in respect to this subject. We might thus have acted under the additional light afforded by their labors and researches, and been guided, to a certain extent, by the result of their investigations. At the proper time I intend to offer an amendment providing that the appointment of district attorneys, which the committee proposes to vest *absolutely* in the Governor, shall be made by the Governor with the *advice and consent* of the Senate. And as thus modified I am in favor of the report of the committee in this respect, and trust that the provision which they have submitted will be adopted. I believe that the change which is recommended by them will be judicious; that it will be advantageous and for the interest of the people. I do not enter upon the discussion of the subject with any hope that the views which I shall express will elucidate the subject more happily than has been done by the committee. But as the question is one of some importance, and must now be decided, I desire to state the reasons which will influence my vote, in addition to those which have been so clearly and forcibly urged in the “explanation” appended to the report. Whenever an office is in any degree representative, I am in favor of affording the fullest opportunity for the expression of popular opinion. It is the right and duty of the people in every such case to pronounce their verdict of approval or censure upon the conduct of a public officer directly at the polls. The theory of our government demands that its exercise should be unrestricted, and the security and perpetuity of our institutions require that the wishes, sentiments and principles of the community should thus be manifested. But a district attorney is in no sense of the term a representative officer, and there is no possible combination of circumstances under which it can become necessary for him, in the discharge of his duties in an official capacity, to declare his political views or mould his official course of action in accordance with the platform or creed of any partisan organization. He is not to legislate; he is not to inaugurate or advocate or carry into operation any schemes to advance the interests of any particular association of citizens, or to show that a certain course of action will tend more to secure the prosperity of the State than the adoption of a different course. He is not even to construe or explain the laws of the State. His duty is very simple and well defined. Certain penalties have been annexed by the Legislature to the commission of certain offenses. It is his province, on behalf of the public, to use every legal means to prosecute the violators of law to conviction in order that the peace of the community may be preserved, that criminals may be punished, and the majesty of the law vindicated. In order to accomplish this the great requisites are honesty of purpose, competent legal knowledge, and firmness of will. And in many instances these are more certain to be obtained by the means of an appointment than a popular election. Not that I would wish for one moment to be understood as entertaining or advancing the opinion that the Governor, or any appointing power, is more conscientious in the discharge of a

duty than the electors of the State, or more desirous to perform a trust properly and honestly. I have faith in the people, in their intelligence and discrimination. I believe in the integrity of the people, and that they will reward or punish any public man for the proper fulfillment of his duties, or the neglect to act in accordance with his oath, when their attention is directed to the fact. But I also believe that an officer who is in any manner connected with the administration of justice, and especially one who occupies the position of a public prosecutor, should be able to discharge his duties, often of an unpleasant and delicate character, with that firmness, fearlessness and entire determination that justice shall have her due, with that manly independence which he cannot at all times exhibit or feel, when realizing that the criminal upon trial may have been instrumental in his nomination or election, or may have sufficient political power through his own influence or that of his friends to defeat all his aspirations if again a candidate. In a republican government, where there is no power superior to the law, and where the success of free institutions depends to a great extent upon the impartiality and certainty with which the laws are executed, it is essential to the permanence of that government that the official whose duty it is to prosecute for infractions of those laws should not be constantly subject to the resentments and caprice of those whose merited punishment has been secured by his diligent and honorable exertions and devotion to his duty. Again, we are all aware that, with respect to nominations for this position, as for other offices, the people as a body are very rarely consulted. A caucus of a few politicians in the several towns in a county, or the different wards in a city, select delegates to a convention, and this convention places in nomination the candidate upon whom the voters are invited to bestow their suffrages. And in the heat of a party contest, in the desire to secure an election, and obtain a victory in a doubtful county, availability is more frequently the requisite than capability, popularity than known inflexibility and integrity of purpose. And after the convention has completed its work every elector may consider himself bound by party ties and obligations to support the nominee, though recognizing the fact that he is unfit for the duties of his position. I do not say that this ever has occurred in the history of the State since district attorneys have been elected. As far as I am acquainted with the record of those who have filled this position in the different counties in this commonwealth, they have discharged their duties fearlessly, impartially and creditably, and they are entitled to additional commendation for the fidelity and diligence which they have manifested, when the tenure of their office is considered. But the principle of electing an officer of that character I consider to be erroneous, and it is in opposition to the principle that I am contending. The very man who in the whole county or city is most peculiarly fitted by unbending integrity, determination of will, activity of mind and superior legal attainments to perform all the functions of the office with the greatest advantage to the public interests, may have certain marked elements of unpopularity with leading and controlling politicians, which,

under the present system, will forever preclude the hope of his nomination. Under the plan which has been recommended by the committee that very person might receive an appointment with general approbation. And this would result not because the people did not recognize his merit and were not convinced of his fitness for the position but because those controlling caucuses and conventions had schemes and purposes of their own to advance, were determined that those schemes and purposes should succeed, and were apprehensive that the individual supposed might not be subservient to those schemes and purposes, but might endanger the success of their combinations. Were all nominations the reflection of the popular will, were all candidates uniformly selected by the great body of the people, and those whom the unbiased wish of their own partisan organizations even would indicate invariably chosen as nominees for the position, then I am free to admit that the argument in favor of an appointment instead of an election would not be of equal force. In the Convention of 1821, when the subject of the Council of Revision was under discussion, Mr. Van Buren, in an able, eloquent and argumentative speech, enumerated among his objections to that body, that it was composed in part of the judiciary of the State. He then remarked: "I object to it because it inevitably connects the judiciary, those who, with pure hearts and sound heads, should preside in the sanctuaries of justice, with the intrigues and collisions of party strife, because it tends to make our judges politicians, and because such has been its practical effect." Now, I conceive that the same reasoning which applied to the judiciary then, is equally applicable to the office of district attorney. The effect of electing district attorneys must be inevitably to connect them with the intrigues and collisions of party strife. It is true, district attorneys do not preside in the sanctuaries of justice. Yet they practice in those sanctuaries; they are sworn officers of the people, to see that justice has its due, that the laws are executed, and that every criminal is brought to condign punishment. To surround them with the excitement of partisan nominations, partisan conventions, and to require from them partisan exertions, is inevitably to connect them, as Mr. Van Buren contended it did the judiciary, with the collisions of party strife, and make them politicians, bound by the obligations of party, dependent upon the power of party, subject to the caprice of party, and consequently to a certain extent susceptible to the influences of party. From all of which the welfare, the best interests, and the very liberties of the people demand that they should be removed. But it may, and doubtless will, be said that improper and incompetent persons might be appointed by the Executive of the State, that influences could be brought to bear upon him which would operate as injuriously as those which frequently control political conventions, and that therefore the result in the one case might in many instances be as disastrous as in the other. This cannot be denied. And yet there are reasons which will present themselves to every mind upon reflection, inducing the belief that their occur-

rence would be less likely under the system proposed, than under the one which is now in existence. If the appointment is made by the Governor, he will be held responsible by the people for every dereliction of duty in the appointee; his inability or neglect to discharge in a proper manner the functions of his office will reflect upon the power which gave him his commission, and that power will to a certain extent be held accountable for his misconduct. The public will require, and justly require, that the individual in whose hands this important trust is confided, and to whom this prerogative has been committed by them, shall previously to its exercise be convinced that the person upon whom he confers the authority of prosecuting officer for a county or city, has the qualities which render him peculiarly fitted for that position, that his integrity is unquestioned, his knowledge of criminal law sufficient to enable him to execute to the satisfaction of the community the duties which he will be called upon to perform, and that he has the energy requisite to surmount the obstacles which influential criminals will be able to interpose to a trial or conviction. And the Governor will be held almost as rigidly responsible for misjudgment as for want of rectitude of intention. The very knowledge of this fact will induce a cautiousness of selection, a diligent and scrutinizing discrimination, and a vigilance in examining every characteristic of the person proposed for his consideration or selected by himself, which in the majority of cases cannot fail to result in the designation of an individual possessing in every respect the necessary qualifications. In addition, under the amendment which I have stated I intend to propose, the appointment must be confirmed by the Senate. And here will be what may be termed a second tribunal before which the nominee is to appear, that his legal acquirements, reputation in the community in which he lives, and qualifications or disqualifications for the office may again be subjected to a rigid and searching investigation. The Senator representing the district within which are the limits of his jurisdiction, will be present and constitute one of the members of this tribunal, and it will be his privilege and duty, under the obligations of his oath, to offer any objections of which he is personally aware or which have been brought to his knowledge, which should prevent a confirmation, while the people of the county or city, being advised that the appointment is under consideration by the Executive or the Senate, would be prompt and active to furnish all the information in respect to the merits or demerits of the candidate which might be necessary or desirable. If an improper person has been chosen under the elective system there is no individual to whom the responsibility can justly attach. The responsibility for his nomination and election is diffused; it centers nowhere; it is shared by an indefinite number; and this diffusion creates a feeling of security and immunity from any accountability for the acts, the deficiencies, the delinquencies, the incapacity of the official, even if his unfitness for the position had been proclaimed and recognized previously to his selection. The burden rests upon no one, and the people

cannot cast any imputation upon a caucus or convention because they have ratified its action by their assistance or indifference, and without that ratification the work of politicians would have been of no validity. If a prosecuting officer who has been created by the Executive prove faithless or incompetent the responsibility lodges with the occupant of the Executive chair. He cannot evade it, cannot deny it; his signature and official seal bear witness against him, and the people can demand of him an immediate removal of the incumbent and a revocation of his commission; and in justice to himself, in vindication of his own integrity, in defense of his own reputation, he cannot decline, and will not be disposed to decline, to yield to the demand, if it has any foundation whatever in truth and fact, and is not entirely based upon groundless rumors and vague reports and insinuations not susceptible of proof. This course of procedure will also be in harmony with the practice of the federal government where while every officer whose position can possibly become representative is chosen directly by the suffrages of the electors, those whose functions are strictly confined to prosecuting offenders against the laws are, in all cases, appointed by the President. In looking over the Constitutions of some of the States this morning I had the curiosity to see what course they pursued in this matter. I find that in Delaware, Maine New Hampshire, Connecticut, and New Jersey the public prosecutors are appointed by the Governor, elected by the Legislature, or selected by the judges of the superior courts. I have no doubt that a perusal of the Constitutions of the other States would disclose the fact that in the majority the same course is adopted as in the States which I have mentioned. In some of those States, if I am not very much mistaken, the prosecuting attorney had been previously elected; but in recent Constitutions which they have framed they have followed the plan of having that officer appointed by the Governor, or by the Governor and Senate. This will also be in harmony with the practice in this State until 1846. Under the Constitution of 1777 the prosecuting officer was appointed by the Governor. The provisions of that instrument remained in force until the Convention of 1821; then the power of appointment was taken from the Governor and conferred upon the court of sessions. In 1846 the Convention assembled which framed the Constitution under which we now live. If gentlemen will look at the records of that Convention they will discover that among the subjects brought to the attention of that Convention, and in respect to which a change had been demanded by the people was not included any petition, request or intimation that a change in the manner of selecting district attorneys was advisable or required. And immediately upon the presentation of the report recommending that that office should be elective instead of appointive, a motion was made to strike out that part of the report of the committee. I am not one of those who would adopt or follow a certain course of action simply because it has the sanction of antiquity, neither would I reject it solely on that

account. If in addition to believing it to be right in principle, it possesses the further recommendation that it has been tried and has not been found wanting, but has been eminently successful a powerful, and it seems to me a convincing argument is presented why it should be accepted. But it may be said that this change has not been demanded by the people. I admit that it has not; that no petitions have been presented here for our consideration and action upon this as upon many other subjects; but I am not willing to admit that it would not meet with the approval of the people. Every plan which has been submitted to us containing amendments to the Constitution, by gentlemen who have carefully investigated this matter, provides for the appointment of these officers. Since this report has been introduced into the Convention, I have taken occasion to speak on the subject to my own immediate constituents. I have not found a single person who did not say that the change was desirable and that it should be adopted. I have consulted persons of different political parties and different professions, whose attention had been directed to the proceedings of this Convention, and without a single exception in the different sections of my own county, among individuals of different professions and occupations, the unanimous opinion was in favor of making the change, and having the prosecuting officer appointed by the Governor, and thus giving him that entire independence which is necessary to a successful and fearless discharge of his duty. I do not apprehend that any such consequences would result from this course as the gentleman from Kings [Mr. Schumaker] has anticipated might ensue. I have no idea that the occupant of the Executive Chair will attempt to control the district attorneys as to the manner in which they shall exercise their functions, or to prescribe their duties. I do not believe he would seek to interfere with them in the least; but he would hold them to a fearless, prompt and impartial discharge of their duties. And that is precisely what the people desire, what they demand; and with less than that they would not be satisfied. They would require that such a supervision should be exercised, that such a vigilant scrutiny should be practiced that the slightest misconduct might be made apparent and immediately punished. It cannot be denied that for some years past crime has been fearfully on the increase in this nation. There is probably no civilized country where human life is considered of less value than in this. There is no enlightened land where great criminals enjoy an immunity from the consequences of guilt, equal to that which is accorded to them in this. There is no community where superior facilities are afforded for the evasion or, at least, the deferring of the infliction of the penalty attached to guilt. Read the daily, weekly, yearly record of crimes in our great cities. See with what impunity they are often committed, how rarely the most aggravated are punished with that severity which they deserve, and what favors are sometimes conferred upon the perpetrators. A writer who has devoted much time and investigation to this subject, states that crime has increased in a greater ratio than the increase of

population, until not only individual security, but social order is endangered by its alarming proportions. It is the duty of this Convention to take some step to resist the spirit of defiance of law which is so often manifested, to frown upon this disregard of legal authority which is so prevalent in the community; to place those whose office it is to enforce the statutes of the State in such a position that every obligation imposed upon them, every service required of them may be discharged and rendered in such a manner that the peace of society may be preserved, the rights of person and property protected and enforced, offenders speedily and certainly punished, and equal and exact justice administered without respect of persons and without fear, favor or reward. And if nothing else should be accomplished by this body, it would receive for this alone the thanks and approbation of the people. I do not mean to assert that all this can be effected simply by changing an office which is now elective to one to be filled by appointment. But I am firmly persuaded that the change will operate advantageously, that it will tend to remove the public prosecutor from the intrigues and collisions of party strife, to repress crime, to punish the guilty, to protect the liberties and rights of the people, and to vindicate the majesty of the law. And I am convinced that then, and then only, will our whole duty in this matter have been discharged when the officer who appears in behalf of the State and to enforce the claims of justice, can act with the consciousness that the criminal for whose conviction he is striving, has been rendered politically powerless to attack, powerless to injure.

Mr. GERRY—It was not my intention, sir, to say a word on this particular subject, but for the remarks which fell from the lips of the gentleman from Westchester [Mr. Greeley], and which, to a certain extent, constituted a personal attack upon the present incumbent of the office of district attorney of the city and county of New York. Those remarks seemed to me to be designed as a serious imputation, also, upon the manner in which justice is administered in the criminal courts of the city from which I have the honor to be a delegate. It is entirely unnecessary for me, either here or elsewhere, to eulogize the present incumbent of the office of district attorney in the city and county of New York. There is no abler lawyer at the New York bar than Mr. Abraham Oakey Hall. His name is known throughout the State, in every county and in every part of it, as a thorough, practical lawyer, and his contributions not only to literature, but also to legal science, and the fidelity with which he has discharged his duties during two successive terms of office, coupled with the enormous number of notorious criminals he has convicted and sent to the State prisons, are the very best evidences which can be furnished, not only of his fidelity to his office, but of his competency to fill it. And I can tell the gentleman from Westchester [Mr. Greeley] that if, in the course of his life of vicissitudes and cares, it should yet be his misfortune to be indicted for any offense in the city of New York, when the present district attorney is in office, he will realize how fervently and sincerely will be

his prosecution by the gentleman who, he says, omits to discharge the duties of his office. He would realize there a more thorough "dissection" made of himself than he has ever heretofore enjoyed, either literary or personal. The statements of the gentleman from Westchester were inadvertent. They must have been so, because they are based on no data. Mere vague, general statements that indictments against persons who are influential and powerful are not properly prosecuted, surely cannot obtain credence for one instant, in a body like this, unless backed by some vouchers. I challenge him to produce the name of one single person occupying a position such as he has stated, who has been indicted for felony or misdemeanor in the city of New York, and who, from the fault of the district attorney, or any *laches* or corrupt conduct on his part, has failed to get his just deserts. One of the recent cases occurring in New York city affords the very best evidence to contradict the statements made by the gentleman. It is that of a young man occupying a position second to none in New York city, in point of fortune and social station. He stood there alone—one of the young men of the day, as it was said, with an income of nearly \$60,000 a year; and yet, in an evil moment, actuated by an insane passion for gain, he perpetrated forgeries to an enormous amount. Every influence was brought to bear that could be brought to bear, either by personal or political or social influence, to divert the district attorney of the city and county of New York from his plain, unequivocal duty to prosecute that young man for the felony which he had committed. He was prosecuted with vigor, and conviction was secured by the admission of guilt on the part of the prisoner, coerced by that vigor; and that man, Edgar Ketchum, is now in the State prison at Sing Sing, a warning to offenders, that social position, money, birth, education, will not avail to protect them from the arm of the law. And I rest my defense of the district attorney of the city and county of New York with that special instance of his official integrity, professional ability, and unswerving rectitude which is worthy of emulation by every incumbent of the office of district attorney throughout the State; because, had he been in any sense a weak, corrupt or inefficient officer, he could, without exposure, successfully have availed himself of the very many influences which were brought to bear upon him to overrule the effect of the indictment by omitting to prosecute it. But I do not rest these arguments upon any mere personal opinions—I had nearly said personal affection—which I entertain for the district attorney himself; for he has been for years a warm personal friend of mine, and I am proud here to express my acknowledgments of the many personal courtesies shown by him, not only to myself, but to every member of the New York bar. From the statistics placed before the members of this Convention in our manual, I have taken the trouble to compile the statistics of 1866. I find there, on pages 11, 13 and 14, of volume two, that, in the county returns of the indictments found and prosecuted in the court of oyer and terminer

(not the general sessions, because that is a separate matter), there were 302 indictments, and out of that number there were 159 convictions, to 143 acquittals; 302 disposed of; and adding the two together, leaves none untried. By reference to the report of the clerk of the court of general sessions of the city and county of New York, made the same year, it will be seen that one thousand seven hundred and four indictments were found during the year 1866, that there were tried in the court of sessions one thousand one hundred and forty-seven, leaving a difference of five hundred and fifty-seven not tried; and of these, five hundred and forty-five were discharged either by reason of the prosecutor not appearing—a very common occurrence in those courts—or from want of the necessary legal evidence to convict; and the total number of indictments remaining in that court untried throughout that year is only twelve. Here is a city where there are three times as many criminals tried and convicted in a year as in any other county of the State; and yet there is a cry raised here against the district attorney of the city and county of New York that he permits indictments against influential and powerful criminals to slumber in his safe. Now, sir, the difficulty is this: the people who are tried in the city of New York are chiefly hardened reprobates, men who, as fast as they come out of one State prison, commit a new offense and are sent into another; and therefore the duty of the district attorney is almost exclusively that of convicting hardened offenders and of sending them back. If any gentleman of the Convention will take the trouble to examine our criminal statistics he will find that in at least one case out of five the offender is an old and hardened one. Here we have a record, not a statement founded upon popular belief, but a substantial record of facts, which I challenge the gentleman from Westchester [Mr. Greeley] to overthrow. Three times as many prosecutions in the city and county of New York as in any other county of the State, and nearly double the number of convictions, and yet that district attorney is called "one-sided," and cited contemptuously as an instance of the disadvantage of elective district attorneys. I do not desire any better argument, any more cohesive statement of facts, to show that the rogues are not yet in the majority in the city of county of New York; for it is an anomaly to suppose that the rogues would elect men to office who were most energetic in sending them to State prison. The returns of the State prison show who are sent from the city of New York, and it will be found that such returns tally with the number of convictions that are had. I for one, do not consider that in the face of this record, the vague statements of the gentleman from Westchester [Mr. Greeley] furnish any evidence, in the city of New York at least, of any "profitable pandering to popular vice." And further, so far as the personal integrity of Mr. Hall is concerned, the statistics show that nearly \$40,000 of forfeited recognizances have been collected through and paid by his office to the proper officials during the last five years. Now, in reference to the propriety of vesting the power of appointing district attorneys in the Governor

of the State of New York. More or less, that officer must be elected upon a purely political basis, and then you have the result following almost inevitably, from the vesting of the power of appointment of district attorneys in the Governor of the State of New York, as there are no less than sixty counties in the State, that sixty district attorneys will be turned out of office on every new election, because every Governor must have his own political favorites, and it is almost a *non sequitur* that a new Governor upon coming into office will immediately re-appoint all the appointees of his predecessor; and if there be any change in the political complexion of the government, this revolution must then certainly follow. I submit in the plainest manner to this Convention, that the office of district attorney is an office that in no sense should be made the subject of personal or partisan appointment by the Governor, vested, as he is, with so much power, because it is a power of life and death, and the district attorney must perform his duty fearlessly, properly and justly, or he will permit the escape of iniquitous and infamous offenders and thereby endanger the lives and property of the people of the State. I deny the statement contained in the report of the committee, under consideration, that the district attorney is in no sense a representative officer. He stands prominent as the representative of the people of the State of New York—the parties plaintiff in every criminal prosecution. He is the representative of the people for the purpose of enforcing their laws against those who infringe upon their peace and dignity; and, consequently, he is vested with a representative capacity more formidable, prominent and conspicuous than even that of the Executive of the State himself. There is another statement contained in that report which I desire to answer in this place—an argument which is urged to the effect that it is not to be expected that the district attorney will be zealous in the prosecution of those to whom he owes his official position; and that is the foundation of the cry raised by the gentleman from Westchester [Mr. Greeley]. In the case of an elective district attorney, to whom does he owe his position? Certainly not to every thief and vagabond who may vote for him; but because he is elected by the people, and if some of the people may be thieves and vagabonds, is that to be urged as a disqualification of him for the duties of his office? It might be urged with equal force against the Governor of the State, because he may owe his election to any thief or vagabond who may chance to vote for him that he must, therefore, favor and patronize that thief or vagabond if elected. On the contrary, the very object of having the district attorney elected is for this specific purpose—to render the prosecution of indictments which are found in the name of the people of the State of New York as fair, candid and impartial as can be. The district attorney represents and should represent no private or political influences. He should not be actuated by gratitude toward any man whose appointee he may be, under any circumstances. And if the Governor is to have entire control of the district attorneys of the State—the position which is now practically held

by the Attorney-General (for I have not heard any answer from the gentleman from Westchester [Mr. Greeley] to the question I put)—then he is to have the control of every indictment in the State, whether it be of political friends or opponents; and I submit that it is a grave question, whether the Governor is any better judge of the fitness of a man for that office than the people of the State are of a man presented and elected themselves, whose representative he unquestionably is. It is the strength of the people, unquestionably, that is the will of the nation, and correlatively it is the will of the people that is the strength of the nation, and unless some very good reason be shown, better than the fallacious arguments of the gentleman from Westchester [Mr. Greeley], why the district attorney should be appointed by the Executive, and the people of the State thereby deprived of the right of selection and election of their prosecuting officer who is to enforce their penalties for the violation of their peace and dignity, I for one shall be in favor of sustaining the present elective system. There has been another suggestion made, but not as yet presented upon this floor—that is as to the propriety of having district attorneys appointed by the judges of the courts in which they practice. That is a point which I shall not now discuss, although I should prefer to see the courts have that power rather than to see it vested in the hands of a single man, even though he were or should be the Executive of the State.

MR. M. I. TOWNSEND—I feel a very deep interest in a question somewhat connected with the appointment of district attorney. I say “appointment”—I might say the creation of district attorneys—that is, the question of the preservation of the public peace of the State. The security of the life and property of the citizen is a matter of public and general concern. Every citizen owes allegiance to the State, and every citizen is entitled to protection for himself, for his family and his property. I believe, sir, the time has come when it is manifest that there are portions of the State where mere elections will not secure the safety of persons and property at all times and under all circumstances. There are more than one hundred polling districts in this State where it is impossible for a peaceable citizen to vote, except by the strong arm and the strong hand, and a ready one, too, unless that citizen shall have the security which cannot and has never been for a long period furnished by any local election or by any local power. I hope the Convention will adopt such provisions as will enable the Legislature to preserve the lives and property of the citizens in so large a portion of this State, and for what is perhaps equally important—the exercise of the elective franchise. I am not slandering the State at large; I am not slandering the body of citizens even in those localities of which I have spoken, because there is no locality in this State that has not a large, conscientious, patriotic and noble population; but there are localities in this State in which the rowdy and the violent element, in times of excitement and strife, have the power at the local election, and we cannot, in these localities by local election, create any power to secure order, as is

perfectly well understood. I have not forgotten the scenes of July, 1863, in this State, and I trust that this generation will not forget them and will not forget to keep such safeguards, so far as the citizens are able, as shall render it certain that such scenes shall not recur in the State. Why, sir, I stand here with the conviction that if the police of the city of New York, on the 13th, 14th and 15th of July, 1863, had owed their places to popular election there would have been a revolution in this State.

Mr. E. BROOKS—May I ask my friend, while reciting the riots which took place in the city of New York in 1863, not to forget the riots which existed among his own citizens, in the city of Troy.

Mr. M. I. TOWNSEND—If my friend knew all the circumstances, he hardly does me a kindness in reminding me of the scenes of that day—that can never be erased from my memory; and as long as God shall give me life I shall pray that other families may be protected from mob violence as mine was not on that occasion; and it is for that reason that I do not wish to bring myself to speak on that subject on this floor. But when I am brought to speak of what I have felt and what has been felt by the partner of my life at the hands of that mob in my absence—that disloyal, unpatriotic, miserable mob—

Mr. SCHUMAKER—Were they prosecuted in your county? were they known and prosecuted?

Mr. M. I. TOWNSEND—I should prefer that the gentleman would not speak of that subject. The district attorney was my friend. No man who went into my house on that occasion was indicted.

Mr. SCHUMAKER—I wish to say they were in our county.

Mr. M. I. TOWNSEND—I am exceedingly sorry the gentleman has introduced this subject. The district attorney although a democrat, was my personal friend, and I decline to answer any more questions. Now, in the city where I reside and in the locality extending for some five miles above it, we have a police, under whose auspices the most perfect order is preserved. If this Convention shall so organize the fundamental law of this State so as to render it impossible to continue that police, the peace of this district will be shaken to its foundation, and men will have to defend their lives, in times of excitement, by the strong hand; and so it will be in other localities. I have not spoken, and do not intend to speak of the city of New York as sinners above all "Galleans." I spoke only of the fact that in the city of New York this mob violence assumed a head that it had not reached elsewhere, and it was for that reason that I made that locality prominent as I did. I have no hostility to the city of New York. If the city of New York wishes to be well governed I say God speed them; if they wish to be badly governed God speed them—perhaps I ought in that case leave furnishing of speed to the other power. [Laughter.] I do not mean by any vote of mine to interfere, except in so far as there may be a matter of general concernment. But, as I set out to say, the preservation of the public peace is a matter of public concernment; and if there be a

locality in the State where an election will not secure the public peace it is the duty of this Convention to devise means by which it shall be secured through the general power of the State. Why, sir, in time of peace our militia are the guardians of public order; yet we do not make our militia a matter of local concernment. Our generals are not elected by the people and the militiamen are not elected. After our militia system is set in operation our colonels are elected by the military organizations; but our higher officers obtain their places by appointment, and the control of the militia is put into the hands of the Executive of the State—for what? For the preservation of the public peace. They are put under the control of the Executive for the purpose of enabling the Executive to carry out that provision of the Constitution which requires the Governor of the State to see that the law is faithfully executed. And such should be the situation of the civic police officers, as I may call them—I mean the police officers other than those who bear arms. I believe it is the duty of this Convention to leave it possible for the Legislature of the State to secure police magistrates who do not owe their appointment or position to the locality in which they preside, if they shall deem it well to do so. And I believe, if the Convention consider that the faithful discharge of his duty by a district attorney is a matter of general concernment, that the Convention should render it certain that in no locality a district attorney should be selected in this State whose interest it is to violate the law. I do not propose in this Convention to say anything against particular district attorneys. In my own locality I voted for the present district attorney; I should not expect to obtain a better one by appointment; and I have no fault to find with him. I know nothing against the district attorney in the city of New York, personally. All I mean to say about New York is that the people of that city are a peculiar people. I do not find any fault with their district attorney; he may be the finest of men or he may be deficient. But I know the gentleman from Kings [Mr. Schumaker] let out one fact which is a matter well worth considering, and that is that the district attorney who held office in the city of Brooklyn was, just previous to his holding office, the counsel of the liquor dealers' association. I do not mean to find any fault with that—

Mr. SCHUMAKER—Will the gentleman allow me to interrupt him? I did not say that; I said he had once in his lifetime been so, and that, after the excise law was passed by the Legislature, he said it was constitutional, and these men all howled.

Mr. M. I. TOWNSEND—I did not mean to find any fault with the district attorney; but that it was a singular fact, a suggestive fact, that he had once been the counsel of the liquor dealers' association, and at a subsequent period district attorney. Now, I am not clear that the committee have reported the best provision. I did not rise, strictly, to advocate or oppose the provision reported by the committee; but I rose for the purpose of calling the attention of the Convention, at this early moment, to the importance of taking no action here that should render it impossible for

the general power of the State of New York to preserve the public peace, and to see that the laws were faithfully executed in every portion of the State. And my friend from Kings [Mr. Schumaker], and my friend from Chautauqua [Mr. Barker], will allow me to thank them for the views that they have expressed in regard to the general characteristics of executive appointments. I agree with them as to the purity of the atmosphere just out of the executive door. I have not been much accustomed to the gases that attend mining operations; but if they have got any fouler air than a man has got to walk through in order to get to the executive chamber, in the matter of appointments, I really should be unwilling to engage in the business of mining. In saying this, I do not mean to impugn the general character and intentions of the present or of any past Executive. I think the State of New York has been most fortunate in the Governors whom it has secured to rule over the State. I have had the honor of a somewhat general personal acquaintance with most of the men who have held that office for more than thirty years, and I am inclined to believe that purer and better men never held the executive office in any State or under any form of government in the world. But they are not omniscient; and the idle, the dishonest, the corrupt, have more time and opportunity to get up presentations for executive favor than honest men have, and can bring more influences to bear. Yet the Executive must have some power; and if we direct the Executive of this State to see "that the laws of this State are faithfully executed," I do not know why the Executive should not be vested with the power to secure their faithful execution. You ask him to command the militia, and you give him the command of the militia; why should he not have command of the police? I would not give him such power as would make the district attorney a slave. I would not assent to allowing the Governor to make a district attorney without the intervention of the Senate. And then they should hold for fixed terms, unless removed for cause, in the mean time. I am not strenuous, however, whether the Executive, or the courts, in some form, should make this appointment; but I am free to say that, in most parts of the State, I believe that good men will be obtained for district attorneys if the system of election shall be continued. But I believe it is very possible that, under excitement, district attorneys might be obtained who would not aid the Governor in the enforcement of the laws. Now, having said thus much, I have another subject that I think is so intimately connected with this matter that I want to speak upon it now, while it is resting upon my mind. The gentleman from Westchester [Mr. Greeley] alluded to the fact that indictments for legislative corruption had been found in the county of Albany, and perhaps in other counties in these localities, and that nothing had ever come of it. I believe that the gentleman from Westchester [Mr. Greeley] is right in regard to his recollection upon that subject; but I wish to call the attention of the Convention to the utter imperfection of our present system affecting this matter—whether constitutional or legislative I

will not undertake to say; but the utter defectiveness of our present system to ferret out and punish legislative corruption. The district attorney now is a local officer, having a local election, having a fixed salary. If an indictment be found for legislative corruption in any county, the district attorney of that county has got to do the work of trying that indictment, without any additional compensation, and the county, when that indictment is found, has got to bear the expense. Take the case of the county of Albany. If the grand jury of the county of Albany should indict any one of the three hundred harpies that hung round the Legislature last winter, and dabbled in corruption—I speak not of the members of the Legislature, but I speak of a worse brood than it is possible to conceive of the Legislature being; I mean the lobby. If the grand jury of the county of Albany should indict any one of that brood of harpies that hung around the Legislature last winter, and the indictment should be prosecuted to trial, it would add just so much to the expenses and taxes of the county of Albany for the current year. The district attorney would in some degree be held responsible for the fault; the grand jury would be held responsible for it when they went to their homes, and, above all, they would feel the responsibility when they put their hands in their pockets to pay the taxes. This corruption probably originates in different portions of the State. Suppose a corporation or any organization in the city of New York wants a legislative favor, it sets apart \$100,000 to bribe the Legislature. It sets in motion twenty agents of the lobby, who will come here to operate upon men from different parts of the State, not residents of the city of Albany. Men come here from the North, if corrupt men can be supposed to exist there; men from the West, if corrupt men can be supposed to exist there, and from the middle counties, if corrupt men can be supposed to be found there. They get their schemes enacted and carried out, and bribery runs riot; and if the county of Albany brings before its grand jury an accusation against these men, the burden of punishing the crime committed against the peace and honor of the whole State is thrown upon the county of Albany, and I can tell gentlemen that is one very important reason why so little is said or done against these men who commit crime in the face of day and in the shadow of your capitol. If this Convention mean to stop this career of corruption, they must see that some officer has the duty imposed upon him of looking after the corruptions of the Legislature, and that the State, against whom the crime is committed, shall bear the expense of the prosecution, and not the people of the county of Albany alone, who may perhaps be entirely innocent of the wrong done against the people of the State. I say what I do say without wishing to say that the district attorney of the county of Albany has not done all he could in regard to this matter. I believe the present district attorney of the county of Albany is one of the most efficient, one of the most patriotic and best district attorneys that ever held office in this locality or any other locality in the State. But, under the system as it exists now, the results I have indicated have occurred, and I tell my friends

they will occur until we make some provision that the burden of these prosecutions shall rest upon somebody besides the citizens of the county of Albany.

Mr. VEEDER—With the permission of the committee, I will withdraw the amendment I offered and offer another amendment in its stead.

The SECRETARY proceeded to read the amendment as follows:

After the words "county clerk," "district attorney, a register and clerk in the city and county of New York, a register in the county of Kings."

Mr. VEEDER—I desire to explain my object in withdrawing my former amendment and offering this amendment. It is at the suggestion of several gentlemen who are disposed to be favorable to having a county supervisor. I wish to leave that question open for the present, and whoever may be opposed to the provision for the election of a county supervisor will have the opportunity afterward to vote on the amendment of the gentleman from Westchester [Mr. Greeley]. The committee in their discussions have carried this subject directly to the question of the election or appointment of district attorneys, and my amendment comes right to the point of the election or appointment of district attorneys. And I desire, therefore, to submit a provision now which will meet the question directly. The committee will also observe that I have made provision for election of the register of the city and county of New York, and for the election of the register of the county of Kings. I wish to say just this word in regard to the election or appointment of district attorneys, as I understand the article proposed by the committee. They propose to place in the hands of the power that shall remove an officer the power to appoint. Taking their argument as true, that the duties of the office of district attorney have not been properly discharged: that the district attorneys of the various counties have neglected their duty and have failed to prosecute notorious criminals, and have allowed criminals to escape; also have failed to prosecute their bail bonds. I desire to call the attention of the Convention to this fact, that the power already exists in the Governor, under the present Constitution, to remove these men from office for any of these alleged charges. If there is a charge preferred against a district attorney elected, the Governor has the power under the present system, to remove him if found guilty. And why is it, in view of this alleged neglect of duty, that thus far the Governor has invariably failed to act? How are we to provide for greater security in the administration of justice, when for twenty years past our Governors have failed to remove one of these district attorneys? Why place the power of removal and the power of appointment in the hands of the Governors when they have failed to perform their duty as the Constitution now stands, provided the complaints made now against district attorneys are true? You propose to change the manner of selection, but you do not propose to change the manner of removal. You leave it in the same hands where no power of removal has been exercised, except in one or two instances for the

past twenty years. I submit this is a perfect answer. The truth undoubtedly is, that the Executive has not removed these district attorneys, because there has been no necessity for it. I do not desire to make any reply to this billingsgate which has been so generously indulged in by the gentleman from Westchester [Mr. Greeley], in his opposition to my amendment. I do not represent that class of the community of which he speaks, and which he pretends this amendment of mine will benefit. I never have allowed myself to use such language, and I do not propose to answer it. If it suits the taste of the gentleman from Westchester I am not disposed to disturb his pleasure.

Mr. GARVIN—The gentleman from Kings [Mr. Veeder] in proposing his amendment, phrased it in a different form from that used in the present Constitution. In the present Constitution the words are "register and clerk of the city and county of New York." I propose that the word "city" be stricken out.

Mr. VEEDER—I am willing to modify my amendment in that way.

Mr. BARKER—I ask that the question be divided.

Mr. GREELEY—Allow me simply to state my position in a few words. I say what no man here will deny, that there is a large class in our great cities, but especially in the great city, commonly known as the "criminal population"—otherwise known as the "dangerous classes." That class, in the city of New York, controls some thousands of votes. I assert that this class has a distinct interest of its own, and a perfect comprehension of its interest; and that interest is, that the laws shall be laxly administered and carelessly executed, and in many cases not executed at all. I assert that this class values its class interest—that is, impunity in vice and crime—entirely above the success or defeat of any political party. I assert that this class will either nominate a district attorney under our present party machinery, or, if not successful in that, will defeat the nomination of whichever party may be obnoxious to it. I say, while you elect district attorneys, you will continually expose the public to this ever-present danger of having men as district attorneys, whom the criminal class have, by their casting vote, elected, and who are naturally flexible to the interests of that class. I desire to guard the public against this great peril, and I see no other way to do it but to give the appointment of this officer to the Governor of this State, who represents the whole State, who is the chief executive of the laws of this State, and to hold him sternly responsible for the exercise of this power.

Mr. GOULD—I take it, sir, that this Convention is not engaged in the trial of A. Oakley Hall, nor of any other individual whatever. The true object which we have in view is to ascertain whether, on the whole, taking all the counties of the State together, this system of the election of district attorneys has worked well, or whether it has worked ill. Now, sir, this, like all other questions of a similar character, must be decided upon the facts of the case. I was very desirous that this Convention would be willing to adjourn this discussion until the coming in of the report

of the Committee on the Prevention and Punishment of Crime, who would have a large collection of facts, arranged in an orderly manner, which I am satisfied would aid this Convention very much in coming to a correct conclusion in regard to the matter; but as they choose not to do so, let me call their attention to one single fact, and then they will be able to judge whether this system has worked well in the county of Albany, and I take the county of Albany for an illustration, not from any invidious motives whatever, but simply because she stands at the head of the list in alphabetical order. In the county of Albany, in the ten years last past, there have been found 3,606 indictments by the grand jury, while all the criminals that have been tried in the criminal courts of the county of Albany during that period amount to 262, showing that only one indictment out of fifteen has been tried there, the remainder have been either discharged by the court or dismissed on bail which has been estreated and never collected; while the indicted criminal has been left at full liberty to prey again upon the community.

Mr. SCHUMAKER—Will you please state the nature of those indictments? The mere fact of indictments amounts to nothing. Do you know anything about the kind of indictments?

Mr. GOULD—The facts of which I am speaking are those which are returned by the county clerk of the county of Albany, and are in the most general form; there are no specific statements with regard to the matter.

Mr. SCHUMAKER—Then you do not know anything about the contents of the indictments—for what crime parties were indicted? You merely know the naked number indicted?

Mr. GOULD—That is all that this resolution called for. But the fact remains that out of 3,606 indictments only 262 have been brought to trial, and it strikes me as a very significant fact, which should be pondered well by this Convention before they determine the question before them. And I may remark, in general, that this is a fair statement for the whole State. I have only time to sum up the statement by saying that in the county of Columbia, out of 264 indictments that were found, only fifty-five (or one out of five indictments) has been tried; and it runs very much the same way in other sections of the State. There is a very great want of careful trial of indictments, and that is the reason why crimes are so rife in this community; because the variety of means of allowing our criminals to escape is so very great that district attorneys do not try them as thoroughly as they ought to do.

Mr. SCHUMAKER—Do you not know that there are certain indictments which can be settled without being tried?

Mr. GOULD—O yes; there may be some such thing.

Mr. SCHUMAKER—Do you know what kind they are?

Mr. GOULD—I cannot tell you all the kinds. Assault and battery, I think, is one of them.

Mr. SCHUMAKER—Do you know what relation assault and battery bears to the whole number of those you have mentioned?

Mr. GOULD—I have not summed them up; I

shall be able to do so by and by. Let me state one case which occurred in my own county, and that will illustrate the carelessness which is manifested all over the State. I speak of a case of arson occurring in the town of New Lebanon, which stirred up the whole population of that place as probably no crime ever committed stirred up that population. The person indicted for that offense was allowed to go free for three years, and when he was brought up before the court of general sessions he was remanded back to the court of oyer and terminer, and from the oyer and terminer back to the general sessions; and in that way, like a battledoor and shuttlecock, he was played about for three years. Finally the gentleman whose store was burned determined that he would urge the district attorney to try the case, and the district attorney dared to do no otherwise than try it, and he obtained a conviction. The case was then appealed to the supreme court on a question of law, and as soon as that appeal was entered the district attorney applied to the court to allow this man to give bail, and the bail was given in the sum of \$2,000; and the men against whom executions had been returned *nulla bona* were taken as the signers of the bail-bond—

Mr. SCHUMAKER—That was the fault of the judge.

Mr. GOULD—And the man went off, and has never been seen since. The county of Columbia incurred an expense of \$4,000, and that is all that ever came of it.

Mr. SCHUMAKER—Was it not the fault of the judge?

Mr. GOULD—It certainly was granted by the judge, but at the motion of the district attorney.

Mr. SCHUMAKER—In the case that you refer to the judge granted the prisoner bail on *habeas corpus*.

Mr. GOULD—At the motion of the district attorney.

Mr. SCHUMAKER—The district attorney had nothing to do with it. He was brought before the judge on a *habeas corpus*. I understand the case well.

Mr. GOULD—That is not as I understand it. Let us take another case. The amount of the estreated bail in the county of Albany, as returned by the county clerk, amounted to \$17,250. I suspect that that is very greatly underrated, for, in the year 1865, I went through the books of the general sessions and of the court of oyer and terminer for the county of Albany, and, unless I am greatly mistaken, the amount of estreated bail in that year amounted to at least \$40,000. Let us, however, suppose that the statement of the county clerk is a correct statement and that that amount has been estreated during the past ten years. What are the facts of the case? Not one dollar of estreated bail has been paid into the treasury of the county of Albany; and I assert, sir, that there are not over ten counties in the State of New York where a single dollar of estreated bail has been paid into the county treasury during the last ten years. There is a large amount of bail estreated in every county in the State. Over one and three-quarter million of dollars have been already reported. But who gets the benefit of

it? That is the question. We certainly know, and know officially, that the county treasury does not get the benefit of it. It seems to me that these things, which are well ascertained facts, show that the present system is erroneous and that it ought to be changed, and that some remedy should be found for all these evils.

Mr BARKER—During your investigation, did you try to find how these facts compare with the record prior to 1846?

Mr. GOULD—No, sir; I have not examined. But my memory runs back to that time, under the Constitution of 1821, when the district attorneys were appointed by the criminal courts of the respective counties, and I know for a certainty that these things were done a great deal better then than now. I know in my own county of Columbia—during the anti-rent excitement, the trials arising out of those anti-rent quarrels—the then district attorney, who is now a judge of the supreme court of that district, and who was appointed by the court, discharged his duties fearlessly and well, in a strong anti-rent county. He procured a great number of convictions. Such convictions could not be obtained since the present Constitution has been adopted. It stands to reason, sir, that a district attorney desiring to be re-elected will pay great attention to public opinion.

Mr. SCHUMAKER—Did not the Governor of the State assist the district attorney of Columbia county?

Mr. GOULD—In one case, and but one; the others were conducted by Mr. Miller alone.

Mr. SCHUMAKER—Did he not send special persons to the county of Columbia, to try particular cases?

Mr. GOULD—He sent Governor Seward in a particular case—it was to aid in the trial of Big Thunder.

Mr. SCHUMAKER—Did he not send Rufus W. Peckham?

Mr. GOULD—I think he did in one case; but the other cases were conducted by Judge Miller alone, and conducted fearlessly and faithfully. You would get no such fearless and faithful trials since this last Constitution was adopted. It is perfectly evident why it is that these district attorneys are careless in this matter. They are paid just as much salary for doing nothing as they are paid for doing something. Now, sir, when the court is held, and a large criminal calendar is to be tried, the district attorney has a number of private cases which it will pay him to engage in; is it not perfectly natural that the district attorney should engage in cases for which he is paid, rather than those for which he is not paid?

Mr. SCHUMAKER—I will ask the gentleman whether he knows that there are district attorneys in this State who are not paid a salary?

Mr. GOULD—No, sir; I think not. It has been said that the Governor of the State of New York has the power to send the Attorney-General, in cases where the public opinion of the county is very much in favor of the commission of any particular kind of crime—as in the cases of anti-rent rebellions. It is very true that he has that power, but no Governor has felt himself bound to exercise that power. I was

in conversation with Governor Fenton only yesterday afternoon, and I put this question to him; whether, in the discharge of his duties, he felt bound to watch over the administration of criminal justice in the State of New York, and whether, without being specially called upon, he would interpose and send the Attorney General there. His reply was that he did not feel himself bound to watch over this matter, unless his attention was specially called to it by persons interested, in the different counties, and was not in the habit of doing it. He does not feel, and no other Governor has felt that interest in the thing which it is absolutely necessary some one should have. It seems to me that if any proposition is perfectly plain, it is that the district attorney, for the reasons mentioned by the gentleman from Rensselaer [Mr. M. I. Townsend], which he has stated very lucidly and clearly, in my opinion, should be entirely independent of popular clamor and popular passion. His sole duty should be to administer the laws with faithfulness and with zeal. It seems to me, sir, that he cannot do so while he is under the pressure of public opinion, as he is under the provisions of the present Constitution. I must confess, sir, that I should prefer—and at the proper time I shall introduce an amendment—to make the general criminal court of a county the appointing power, as it was under the Constitution of 1821. It was admirably managed in that case, and if the judges of the criminal courts are invested with the power of appointment or removal of the district attorney, I have no doubt that a very great improvement would be effected.

The CHAIRMAN announced the question to be upon the amendment of Mr. Veeder.

Mr. VEEDER—In the Constitution where it speaks of clerks I wish, by my amendment, also to include the register and clerk of the city and county of New York.

Mr. FOLGER—I wish to ask the gentleman why he wishes to make the register of Kings county a constitutional officer when he is now an officer by statute.

Mr. VEEDER—My object is to avoid any misunderstanding about it; this office having been established by a separate clause in the Constitution of 1846, and the register of Kings county having been established since, I want it put in, in a way that there shall be no mistake about it and have it included, as the register of New York was in the Constitution of 1846.

Mr. FOLGER—There is also a register in Westchester county, but I do not see any reason for making him a Constitutional officer.

Mr. HUTCHINS—It was not my purpose to say anything on the question now before the committee and I should not had not some remarks fallen from the lips of the gentleman from New York [Mr. Gerry], which I think should not go unanswered at this time. I speak more particularly for the city and county of New York. That district attorneys in most other counties of the State may very properly be elected by the people, and that an equal and perhaps better class of officers may be secured by election rather than by appointment I am willing to concede; but, sir, so far as the

city of New York is concerned, I cannot allow this committee to go uninformed of the fact that the gentleman who holds the position of district attorney of the city and county of New York, if he was here to speak for himself, I think would advocate appointment by the Governor, rather than election by the people. Why, sir, in 1857, when the question was before the Legislature whether there should be formed out of the city of New York and adjoining counties a metropolitan police district, the commissioners to be appointed by the Governor on the confirmation of the Senate, Mr. Hall, the present district attorney of New York, was the earnest, able, and persevering advocate of that measure, and it was owing to his influence and labors almost entirely that it became the law of the State, and, I may add, remains so to this time. What is your district attorney but a branch of the police, a part of the power to see that the law is executed? The police arrest the offender; the district attorney sees that he is indicted and properly tried; sees that justice is done between the people and the prisoner. He acts not alone as the counsel of the people, but as the counsel of the prisoner, to see that justice is done between him and the people. No feeling of pride to point to the number of convictions obtained by him should control the action of the district attorney in the discharge of his duty, and the fact stated by the gentleman from New York [Mr. Gerry] of the number of convictions in that city as showing how honest, and faithful in the discharge of his duties the district attorney is, I think proves nothing. He has to see that justice is done; to see that those who are guilty are convicted, and that the innocent do not suffer. The gentleman from New York [Mr. Gerry] said to the gentleman from Westchester [Mr. Greeley] that if there was anything wrong the Attorney-General could come down to the district attorney's office, overhaul his papers and records, and see that all was made right. This is not so. The Attorney-General has no such power over district attorneys; he cannot go into his office and interfere with him in the discharge of his duty. The Governor may give him direction to attend the court of oyer and terminer and assist the district attorney in the trial of cases (or a justice of the supreme court may give that instruction), and there his power and duty ends.

Mr. GERRY—Will the gentleman give way for a moment to allow me to ask him a question?

Mr. HUTCHINS—No, sir. The Governor or judge of the supreme court can give that direction, and that is all the power that the Attorney-General can exercise in these matters. Now, if the committee will pardon me, I will give the views of the present district attorney of the city of New York on this subject. They are contained in a communication to the Committee on Cities and Villages of the Senate of 1857, and are so well expressed, strongly put, cogent and powerful that nothing I could say would add to their force. In the first place, he refers to a message of his Honor, Fernando Wood, then mayor of the city of New York, presented to the common

council on the first election of that officer, in 1855, in which he says:

"It was thought that making the police hold office during good behavior would remove it entirely from political influences; but whilst the power to appoint, suspend and remove is political and elective, it will be expecting too much of human nature to suppose that political influence can be excluded altogether. The whole police board was elected at the late election, two of the late board (the recorder and the city judge) being candidates for re-election, and policemen would have been more or less than men if they could have remained indifferent spectators of the result. I am confident the judiciary is not the proper authority for determining police matters; nor are its members qualified, either by habits of life or train of reflection, to make good commissioners. The bench and the service would each be benefited by a separation. My colleagues on the present police board fully concur in these opinions."

He then quotes from a letter written by Mr. Wood to the then Lieutenant-Governor of the State as to the propriety of the election of these commissioners by the people. He says:

"The commissioners are to be elected by the people. It will not do to assume that the members of the Legislature are ignorant of the mode of conducting our primary elections in this city by dwelling upon objections to this way of making commissioners, who are to be clothed with the important power of appointing, trying, punishing and removing policemen in whose hands are placed the custody of the peace, order, property and lives of nearly three-quarters of a million of inhabitants. There are some propositions so evident that no argument or statements are required to elucidate them; that a police system founded upon this principle, deriving its appointment from this source, will be destructive to every semblance of what constitutes police, is one of these."

That was the language of Mr. Wood in 1855, when mayor of the city of New York, and probably understanding the politics of this State as well as any gentleman upon this floor, or any other gentleman of this State. Mr. Hall then proceeds to say:

"The first objection made to this proposition is its assumption, by the State, of power in government which belongs to local authorities. Police, according to Blackstone, is defined to be 'the internal government of a kingdom or State.' The Legislature, which is the representative of the whole police power of the State, under constitutional grants, selects its depositories of that power. That selection must vary under circumstances. The minor village of a sparsely settled district, or the smallest city of the interior, may be very well allowed its local government uncontrolled, even should it see fit to utterly neglect the advantages and abuse the power conferred; for these may be of no concern, except to their own immediate citizens.

"Government, within a subdivision of the State, develops in magnitude and importance according to its size, to its wealth, to its population, to its intercourse with other subdivisions. Thus, the harbor-master of a great port, the wardens, the principal officer of its health, the almoners of its

charities, the guardian of its emigrants, may most improperly be appointed by local authorities, and best selected by the central power; for, although their sphere of action is local, and their subordinates hold local habitation, their duties affect the police, or the commerce, or the health and well-being of the whole State.

"The police department of New York city, as at present organized, is an innovation upon democracy, in that it contains within it a standing army almost subject to despotic control. Grant that this latter is expedient, must you not avoid the absurdity of mingling the democratic and aristocratic elements so freely as to neutralize each other in operation? New York city is one of the main gates of the State. Within it the citizen of every town, hamlet and village enters with his merchandise, his superfluities of wealth, or his sacred person and life. Millions of denizens from other States, or foreign lands, also seek its portals year by year. Its cleanliness, its order, its health and its security for property or life, are matters of vital importance to the whole State. Selfishness cannot sustain its logic when, in the great metropolis of the Empire State it says to the Buffalo forwarder, or to the Rochester miller, or to the Oneida tanner, "Your property, when in New York city, concerns none except the local authorities, who will protect it as they please." Nor when it argues to the unsophisticated country gentleman, or to its citizen-relative of an arriving emigrant, or to the person of wealth visiting it to embark for Europe, "Messieurs, you may walk into Peter Funk shops, be robbed by midnight marauders, be preyed upon by designing sharks, and be dealt with as they may please to treat you, but this government is our sole local concern." The peculiar circumstances which cluster around the geographical situation of New York city, and in relation thereby to the whole State, and the connection of its society and wealth with the interior of the State, render fallacious the argument which local pride would thus make. Suppose that the local authorities of the city choose to let their gutters reek with filth: to allow a plundering of the warehouses of goods *in transitu* by marauding bands of political allies; to permit Broadway at night to rival Hounslow Heath, cannot the sovereign power of the State interfere and take back from the local agents the delegated power which it gave and bestow it upon others? and under such circumstances ought it not to do so? To borrow the rhetoric of Mr. Wood, in the last extract, "It will not do to assume that the members of the Legislature are ignorant" of the growing insecurity of property and person in the city by "dwelling upon" detail which the press have made household words from Sandy Hook to Suspension Bridge; an insecurity which relates, according to official statistics, as much to the strangers in our metropolis as to its citizens. Fully one-half of the criminal cases brought before grand juries concern non-resident complainants defrauded by baggage-smashers, passenger agents, mock auctioneers, disreputable houses, dock thieves, hotel burglars and midnight marauders. And in the opposition remonstrance of March, 1855, occurs this language in speaking of the members

of Legislature: "Their constituents on their visits to our city, on business or pleasure, peculiarly require the protection of a vigilant and energetic police.

"It is tauntingly said that no member of the Legislature from New York city desires these reforms. Granted that this may prove so; the question is pertinent whether justice to their own constituency does not require that the country members should assist them to a practical climax.

"Many experienced citizens of New York city believe that the general theory of the proposed act is capable of practicable accomplishment. They believe that, under its auspices, the time will speedily come when, with regular and special policemen, the great metropolis will be guarded by vigilant men, who, unawed by the political whip, not enervated by favoritism, diligently inspected, carefully instructed, urged by honorable emulation, rewarded by promotion, pensioned in sickness, and insured at death, will constitute a department as perfect in operation as the peculiarities of human nature or as "moral insanity" will permit; when a great army may instantly be raised to combat riot or control pestilence; when cleanly streets will be attained at comparatively slight cost, and without regard to the whims or perjuries of a negligent contractor, or the dishonesty of a sworn official, defying alike the law and his civic associates; when the person of the elector will be kept sacred; when polls must be guarded, and when fraud will not lurk under the ballot-box; when the inhabitants of a great city and the travelers of a great State may feel that life and property are not to be solely guarded under the instincts of the law of nature.

"The rural districts of the State contribute largely to the wealth and magnificence of its metropolis. May not the people of the latter hope that the so-called rural members of the Legislature will at least interfere for the protection of their own constituency by the improvement of the police in the city of New York."

That law was passed, Mr. Chairman. We have lived under its action for ten years, and I have heard of no wish for its repeal, certainly no petition of that kind has come up to this body, and I can only say in conclusion that all the arguments that applied in the case of the formation of the Metropolitan police board, to taking the power of selecting the commissioners away from the people, applies equally to the election of district attorney of the city and county of New York. I do not stand here to find fault with Mr. Hall in the discharge of his duty; I am willing to concede that he has been a capable, and energetic officer, but it is impossible for a man looking for re-election or for election from that class of inhabitants which he describes in the communication referred to (and they are the class who control primary elections); it is utterly impossible that he should be that independent public officer that he would be if he derived his appointment from some other source. Whether it should come from the Governor or county judges, as under the Constitution of 1821, or some other authority I am not prepared now to say, but that it should come from some other source than from the people directly in the city of New York, I, for my own

part, entertain no doubt. Mr. Chairman, some ten years ago the district attorney of the county of New York suddenly died; I refer to Mr. Nathaniel Blunt. Mr. Joseph Blunt was appointed his successor, and he inaugurated a new era by the indictment of a large number of the members of the common council and other public officials; his very name became a terror to evil doers. He was the appointee of the Governor; he held the office for some five short months, and when the time came around for re-nomination he did not receive the nomination of either of the political parties of that day. It was not possible for him to receive it. He had offended too many men. He had pursued his duty fearlessly. He had caused the indictment of too many officials. That thing has not occurred since, under the elective system. No district-attorney, whose name I can recall to mind, has discharged the duty as fearlessly as Mr. Blunt did during the short time he held appointment as appointee of the Governor. Bad men will undoubtedly be appointed and bad men will undoubtedly be nominated and elected. That is not the point. It is, how will you get the most active, efficient and fearless officer? Will it be the one who depends upon primary meetings and nominations and elections in the city of New York, or the man who receives his appointment from some other source.

Mr. GERRY—I want to ask the honorable gentleman who has taken his seat, whether the late Mr. Joseph Blunt ever tried those members of the common council after he took the trouble to get them indicted by the grand jury, and whether he did not entirely abandon the prosecution of those indictments, and of every one of them; and, secondly, whether Mr. Blunt's politics were not the persuasion known as republican. I would also like to know whether I understood him as asserting that the Attorney-General has not the power at his own option to supersede the district attorney of any county in any trial in which he may be engaged, and conduct the trial himself on behalf of the people of the State of New York?

Mr. BURRILL—I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Burrill, and it was declared lost.

The question then recurred on the first part of the amendment of Mr. Veeder, providing for the election of district attorney.

Which was lost, on a division, by a vote of 50 to 40.

Mr. BICKFORD—I move the committee do now rise, report progress, and ask leave to sit again.

The CHAIRMAN—The motion is out of order at this time.

The question was put on the last part of the proposition of Mr. Veeder—for the election of register and clerk in the city and county of New York, and register in the county of Kings.

Which was declared lost, on a division, by a vote of 37 to 38.

Mr. VEEDER—I call the attention of the Chairman to the fact that there is no quorum voting.

Mr. E. BROOKS—There being no quorum voting, the Chair is bound to report that fact to the Convention.

The CHAIRMAN—The point of order is well taken. The Chair is of opinion that there is a quorum present.

The question was again put on the second portion of the amendment of Mr. Veeder, and it was declared lost, on a division, by a vote of 39 to 51.

Mr. SMITH—I move a reconsideration of the vote by which the election of district attorney was carried. I do it because some have voted under a misapprehension in that regard.

Which was laid on the table.

Mr. BICKFORD—Does the Chair hold that the motion to reconsider must lie on the table? It was held differently from that in the committee the other day.

The CHAIRMAN—The Chair is of the opinion that this committee may not meet again, and it is practicable to entertain the question now.

Mr. VEEDER—I rise to a point order: that the same rules in the Convention apply to the Committee of the Whole. A motion to reconsider should lie on the table.

The CHAIRMAN—The Chair is of the opinion that the point of order is not well taken.

The question was put on the motion of Mr. Smith, and it was declared lost.

The hour of two o'clock having arrived, the Convention took a recess until half-past seven o'clock p. m.

EVENING SESSION.

The Convention re-assembled at half-past seven o'clock, and again resolved itself into Committee of the Whole on the report of the Committee on Town and County Officers, etc., Mr. BELL, of Jefferson, in the chair.

The CHAIRMAN announced the pending question to be on the amendment of Mr. Greeley, to strike out the words "town and county officers" in the third line.

Mr. GERRY—As the Convention was about adjourning this forenoon, I took the liberty of asking the gentleman from New York [Mr. Hutchins] who preceded me in his argument, a question in regard to the power of the Attorney-General, which he did not see fit then or subsequently to answer. On reflection it occurred to me that the question might seem a captious one; but in order to show him that the question had a motive in it, and in order to show the entirely erroneous statement of the law by the gentleman to the Convention, I propose to show beyond a doubt that the Attorney-General has the power I suggested in my remarks. By the section of the Revised Statutes relative to the power of the Attorney-General, it will be seen he has precisely that power. It is there made his duty to prosecute and defend all actions, in the event of which the State shall be interested, and by the subsequent sections of the statutes to be found at large in the 1st volume of the 5th edition at page 437-8, powers are specifically conferred on the Attorney-General to conduct criminal prosecutions. And in connection with that the case of *The People against McLeod*, 25 Wendell, 483,

572, and also reported in 1 Hill, settles the point beyond a doubt. The supreme court there laid down the rule conclusively that the Attorney-General is the supreme executive officer of the State in the prosecution of all criminal proceedings, and that the district attorneys are merely his representatives. The case, it will be remembered was a proposition, or rather a motion, that the court be directed to enter a *nolle prosequi* in the case of Mr. Leod, who was indicted for murder. The court said:

"At common law the Attorney-General alone possessed this power, and might, under such precautions as he felt it his duty to adopt, discontinue a criminal prosecution in that form at any time before verdict. The power and practice under it are laid down in 1 Chitty's Criminal Law, 478, edition before cited. It probably exists, unimpaired, in the Attorney-General to this day; and it has been by several statutes delegated to district attorneys, who now represent the Attorney-General in nearly everything pertaining to indictments and other criminal proceedings local to their respective counties. The Legislature finding the power in so many hands, and fearing its abuse, by the 2 Revised Statutes, 609, 2d edition, § 54, provided that it should not thereafter be lawful for any district attorney to enter a *nolle prosequi* upon any indictment, or in any other way discontinue or abandon the same without leave of the court having jurisdiction to try the offense charged."

Mr. SMITH—I rise to a point of order. The gentleman [Mr. Gerry] seems to be addressing himself to the question of district attorneys; we have passed upon that question, and it is not now before the committee.

Mr. GERRY—I have nothing further to say, having accomplished all I desire in citing the authority.

The question was then put on the amendment of Mr. Greeley, and it was declared lost, on a division, by a vote of 41 to 33.

A DELEGATE—There is no quorum voting.

The question was again put on the amendment of Mr. Greeley, and it was declared lost, on a division, by a vote of 47 to 37.

Mr. ANDREWS—Is a substitute now in order to the first section?

The CHAIRMAN—It is.

Mr. ANDREWS—Then I offer an amendment by way of substitute.

The SECRETARY proceeded to read the substitute, as follows:

SEC. 1. Sheriffs, clerks of counties, including the register and clerk of the city and county of New York, coroners and district attorneys, shall be chosen by the electors of the respective counties once in every three years, and as often as vacancies shall happen. Sheriffs shall hold no other office and be ineligible for the next three years after the termination of their offices. They may be required by law to renew their security from time to time; and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff. The Governor may remove any officer in this section mentioned within the term for which he shall have been elected, giving to such officer a copy of the charges against

him, and an opportunity of being heard in his defense.

Mr. ANDREWS—Mr. Chairman, I offer this substitute for the reason that while it contains the substance of the remaining portion of the section reported by the committee, it seems to me to express in simpler language and without unnecessary prolixity the idea which that section contains. The committee have reported a provision in place of that contained in the section of the existing Constitution, declaring that a sheriff shall not be re-eligible or act as under sheriff or deputy for the succeeding term; but that the retiring sheriff shall finish all business remaining in his hands at the expiration of his term, for which purpose his commission and official bond shall continue in force. I know of no necessity for that prohibition with respect to the sheriff acting as under sheriff or deputy after the termination of his term of office; and the part of the section providing that he shall finish the business remaining in his hands at the expiration of his term, and that his commission and official bond shall continue in force during that time is a mere statement of the existing law upon that subject. This matter is now entirely under the control of the Legislature, and that power has been properly exercised. The amendment I propose differs from the section reported in the last clause. The committee say that the Governor may remove any officer in this section mentioned for incapacity, neglect of duty, malfeasance, intemperance, turpitude or crime, first giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense. The existing Constitution reads that "the Governor may remove any officer in this section mentioned within the term for which he shall have been elected, giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense;" differing from the section before us in omitting the statement of the specific causes of removal upon which the Governor may act. The section as it stands in the present Constitution is, in this respect, more comprehensive than that proposed by the committee. It is better, I think, that we should not attempt to define the particular causes of removal upon which a Governor may act. It is hardly to be supposed that this exercise of power on the part of the Governor would be undertaken except for reasons which would authorize his action. I think we had better leave it as it is.

Mr. SMITH—Mr. Chairman, in regard to the language of the two sections, that is a matter of taste, and not a matter upon which it becomes me to speak. Upon the question of prolixity, however, if the gentleman will take the pains to compare, he will find that the section reported is no longer than the one in our present Constitution which is offered as a substitute. In reference to the necessity for the provision that a sheriff shall not act as deputy or under sheriff for the succeeding term, I would say that, in my opinion, there is a necessity for such a provision; for it sometimes happens that a man holding the office of sheriff and desiring a re-election, but being ineligible under our present Constitution, procures some person who does not care to perform the duties of the

office to accept the position, while the retiring sheriff performs the duties as deputy and thus evades the law. I have known such cases precisely, and it was in reference to that class of cases that this clause was inserted; and if the gentleman will take pains to refer to several of the Constitutions of the States, all of which I have examined in regard to this matter, he will find the same provisions. Now, if there be any good reason for making the sheriff ineligible for a second term, the same reason demands the provision under consideration, which prevents him from doing indirectly what he cannot do directly. If there is no occasion for preventing him from holding the office the second time there is no occasion for this; but if there is reason for one there is reason for the other. I desire to make one or two other suggestions in this connection, which I intended to have made at the outset, but was prevented by some other gentleman obtaining the floor before I could do so. If gentlemen will take the pains to look at the former Constitutions they will find that in the Constitution of 1777 there was scarcely any attention paid to town and county officers. There was no town and county system of government established by that Constitution. Most of these officers existed under the English common-law system, and the Constitution simply recognized their existence, but made no provision, or but slight provision, in regard to them. In the next Constitution, 1821, some advance was made upon this subject—some effort was made to create a system and incorporate it into the Constitution; but very slight advance, however, was made upon the Constitution of 1777. In the present Constitution of 1846, there was considerable advance made upon the former Constitutions—there was a partial system adopted and incorporated into the Constitution; but that was not complete, for while it referred to, and provided for, the election of some of the leading officers, it left others without provision, to the discretion of the Legislature. Now, it was the effort of the committee to incorporate into this article the existing provisions of the present Constitution, together with the provisions of law on that subject, in one harmonious whole, so that our written Constitution shall present a complete system of town and county organization and government. If the committee have been successful, this article, as a whole, presents a complete system. I make these suggestions simply for the purpose of showing that if any essential alteration is made in any one of the sections, it may be necessary to make a new article, because the various sections are interwoven—one is dependent upon the other. It takes the whole to make one perfect, symmetrical, harmonious system. Now, the committee have no pride in this matter; they only desire to get the best Constitution that can be obtained, but it is to be hoped that if amendments are found necessary, they will be so incorporated as not to mar the harmony of the whole. We have granted to the Legislature the power to provide for new officers, and to regulate the election and appointment of officers not otherwise provided for in this Constitution. If these provisions should be adopted, a person would be able to ascertain our system of town and county organ-

ization and government by looking into the written Constitution, and would not be obliged to look through scattered volumes of statute law, and reports of judicial decisions, as we now are obliged to do. I understand the office of a Constitution to be to organize the government in its various departments and put it in working order; and it should be done so clearly and distinctly that there shall be no danger of collision or friction in the operation of the government in its different departments, and so that the rights of the people may be protected. If we have a written Constitution at all it ought to be as perfect as possible upon all the matters of which it treats, and the Convention has found a difficulty in this regard from the commencement. Committees have carefully elaborated and prepared their articles and presented them to the Convention, and if properly prepared one section depends upon another. They must be viewed together and compared in order to understand the whole system. Amendments have been presented here by members of the Convention by wholesale, without comparison of one section with another. These amendments, perhaps, have affected every part of the article under consideration; and amendment after amendment has been presented and adopted until finally, when we got through, we had a regular piece of patch-work. Now I trust that will not be done in this case. If a better article can be suggested the committee will be as happy as any other members of the Convention to accept it. But if it is to be amended let it be so amended as not to interfere with the harmony of the whole article. These are all the suggestions I have to offer at present.

Mr. POND—Is an amendment now in order?

The CHAIRMAN—The Chair is of the opinion that it is.

Mr. POND—I offer the following amendment:

Amend the amendment by striking out the words "and be ineligible for the next three years after the termination of their offices," and insert in lieu thereof the words "during the term for which they are elected."

Mr. POND—It seems to me, sir, that this prohibition or inhibition upon the sheriff from being re-elected is not necessary to be retained in the Constitution. The object of it undoubtedly was to provide against a sheriff using his office and the power which it gave him at a time when imprisonment for debt existed, to re-elect himself. As the law now is, there is no such necessity any more than there is for the prohibition of the re-election of any other officer, or making him ineligible to re-election; I know of no reason why a sheriff, if he be a good officer, should not have the benefit of a re-election in case the people want to re-elect him—in case he is a man peculiarly fitted to fill the office and discharge its duties with fidelity, and to the universal satisfaction of the people. I know of no reason that applies to a sheriff at this day that does not apply to every elective office. I therefore move to strike out the prohibition.

The question was then put on the amendment of Mr. Pond and declared lost.

Mr. COOKE—I offer the following amendment:

Amend by striking out "they may be required by law to renew their security from time to time, and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff."

My only objection to this clause is, that it is unnecessary, and deals with matters that ought to be the subject of legislative action rather than of constitutional provision. The Legislature, while they may provide for security to be given by the sheriff on taking possession of his office may, with equal propriety, provide for renewing that security. The provision in the Constitution as contained in the substitute, contemplates that the Legislature shall provide for renewing the security of the sheriff. The Legislature was required to provide for taking security originally from the sheriff, and I claim that there is no more necessity for incorporating this provision for renewed security than for making provision for the original bond. Now, in regard to the other clause, that the county shall never be made responsible for the acts of the sheriff, I consider that wholly unnecessary. I know of no principle of law by which, neither can I imagine any case, where the county would be made responsible for any official act of the sheriff, unless it is by virtue of the statute that makes the county liable for damage done by riot; I believe, in that case, the law makes the county liable, in certain cases, for the omission of the sheriff. My recollection of that statute is, that in case of damage done by a riot, if a party has called upon the sheriff to protect his property against mob violence and he is not protected, he has an action against the county for damages.

Mr. GREENEY—Before voting on this I would like to know some reason, if there is any, for this provision, which says a county shall never be made responsible for the acts of the sheriff. For instance, here is an officer chosen by the people of the county; they know him, or they ought to know him; they ought to know that he is responsible and fit for his office. I, living a thousand miles away, send a debt to be collected, knowing nothing of this sheriff. Now, suppose that sheriff collects my debt, gets the money, and runs away. I want to know if the people are not responsible? Their duty is to see that that officer is fit for his position, and that his bonds are sufficient. Why we should put in this contrary clause I cannot comprehend.

Mr. RATHBUN—I am satisfied from the arguments of many of the delegates, that they are forgetful of what the Constitution has in it now, and I was until I picked it up. I find this in it: "Sheriffs shall hold no other office, and be ineligible for the next three years after the termination of their offices. They may be required by law, to renew their security from time to time, and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff." That is the Constitution of 1846.

Mr. COOKE—I would say to the gentleman that I drew my amendment on the Constitution of 1846. I deemed it unnecessary then.

Mr. RATHBUN—Now, Mr. Chairman, that

provision of the Constitution of 1846 is one that we have lived under. I never heard of a proposition in my life, until this report came in, to the effect that it was desirable in any sense whatever to alter it, and I doubt if a man can be found here on this floor who ever did hear of any such thing. This, in regard to the re-election of the sheriff, is a matter, in my judgment, just like an election of anybody else. But it is there, and the people have conformed to it, and are apparently content with it; I have no inclination to disturb it, and I submit that when we have an article or section which has existed for twenty years and upward, and no man has ever complained that it was wrong, or ought to be altered; we had better let that alone. Sir, if there is anything in the way in this country in regard to the adoption of the Constitution we shall frame, it will be found to be in the end, that we are tinkering too much with it. We ought to let things alone that are right; and I shall insist upon it that it is better worth the while of this Convention to stand by the Constitution of 1846 and preserve every word in it, unless they can show some good reason for changing it—that it works wrong and ought to be changed; unless the gentlemen can show that, I shall be in favor of letting it alone. Now, in regard to the balance of this report, the committee have labored and have performed their labors well; but I should think that with a Constitution from 1777 to 1867, in which you will not find any provision in regard to supervisors or town clerks, or town officers, it is a bad time to begin in 1867 to put them all in it, fixing the terms of office and making provision in regard to the town officers who are now established and regulated by law, and always have been; to break up a system perfect in itself, by incorporating that law in the Constitution. This cutting off the power of the Legislature to regulate according to the public will, had better be left out of the Constitution, and I intend to vote for every amendment that proposes to strike out this amendment, and to adhere to the Constitution of 1846. I believe that is right, and I think the more we conform to the Constitution of 1846 in this respect, the better we shall find it.

Mr. BARKER—I wish to make one suggestion, that when the Constitution provides that the sheriff shall keep his security good in the manner required, he being a constitutional officer it may be questionable whether the Legislature has the power to declare his office vacant if he fails to comply with the provisions embraced in the Constitution; the provision is inserted here so the question cannot be raised in the courts. In my judgment it is wise to retain this constitutional provision, so that his office may become vacant if he does not comply with the provision in reference to filing security sufficient to satisfy the public officers who are authorized to approve it.

Mr. DALY—I desire to say in addition to what has been said by the gentleman from Chautauqua [Mr. Barker], that the Constitution of 1821 contains exactly the same provision as the one now reported; so that for forty-six years we have lived under that provision without any complaint being made against it. I will add that this provision was carefully considered in the

Convention of 1821, as the question of electing sheriffs then came up for the first time.

The question was then put on the amendment of Mr. Cooke, and it was declared lost.

Mr. SCHUMAKER—I offer the following amendment:

After the word "defense," in the last line of section one, add "and a trial by a jury of the truth of the charges in a court of record in the county where he shall reside."

I do not propose to say much at this time in offering the amendment. But I have not yet heard of an objection to it, but whenever I have heard discussed within the last few years this summary manner of trying the character of public officers by the Governor it has generally been disapproved. I ask in this amendment that a public officer, before he shall be removed from his position, before he shall be disgraced before the world, before he shall have his character blasted as a public officer and as a private citizen, he shall at least have the privilege of meeting his accusers face to face and of cross-examining the witnesses against him; that he shall have guaranteed to him by the Constitution the same privilege in protecting his public character as he now has in any issue that may arise in regard to his personal character or property.

The question was then put upon the amendment of Mr. Schumaker and it was declared lost.

Mr. MASTEN—Mr. Chairman, I favor the amendment of the gentleman from Onondaga [Mr. Andrews]. It substitutes the first section of the tenth article of the present Constitution for that reported by the committee; and I go further. I am in favor of substituting the whole of the tenth section of the present Constitution in place of the section reported by the committee. The error into which the committee has fallen, it seems to me, is that they have gone too much into detail. The Constitution never should deal with details. It should state certain leading and controlling principles of government in clear language, and the details should be left to the Legislature; otherwise we will have an instrument that is not sufficiently pliable for the use for which it is designed. Now, to show that the committee has fallen into this mistake, I would call the attention of gentlemen to the subsequent sections of the report—to the third and seventh sections; and I do this by way of illustration of the position which I take in respect to the first section. The third section provides, sir, that there shall be one supervisor elected from every organized town. I am aware that in the latter part of the report of the committee there is a section conferring power upon the Legislature to make some alteration in this respect, but until the Legislature shall act, but one supervisor can be elected from each of the towns. By way of example, I will take the county in which I reside. In that county we have twenty-five towns, and we have a city with thirteen wards. If a ward should be construed to mean a town, then if this report shall become a part of the Constitution we would have thirty-eight supervisors, twenty-five elected from the county towns and thirteen from the city. The city, sir, has twice the population of the

county towns outside of the city, and the city pays about seven-eighths of the whole tax upon the county. So that we would have this state of facts, we would have twenty-five supervisors representing one-eighth of the taxation and one-third of the population, and we would have two-thirds of the population and seven-eighths of the taxation represented by thirteen. Again, sir, the provision in respect to the powers conferred upon the board of supervisors does not meet my approbation. I think that that part of the business more properly belongs to the Committee upon the Powers and Duties of the Legislature, and I prefer the provision which is to be found in our present Constitution in that respect. It will be found at the last end of the third article, which says that the Legislature shall have power to confer upon the board of supervisors such powers of local legislation as they shall deem proper. For these reasons, sir, I shall support the amendment proposed by the gentleman from Onondaga [Mr. Andrews].

Mr. SMITH—I desire to ask the gentleman a question. I wish to inquire what details he finds in the first section of the article now under consideration that are not found in the article of the old Constitution.

Mr. MASTEN—I spoke of the article reported generally. I alluded to the third and fourth sections as particularly objectionable in that respect.

Mr. PAIGE—I understand that the substitute is offered for the first section of the article in the present Constitution. I have no objection to that article, with one exception. In the article reported, the power of the Governor in the removal of incumbents of offices is restricted, which I think is an improvement upon the old Constitution. It reads thus: "The Governor may remove any officer in this section mentioned for incapacity, neglect of duty, malfeasance, intemperance, turpitude, or crime." That restriction is not contained in the Constitution of 1846, and in high party times the Governor may remove an officer simply for political reasons. I think, therefore, in that respect the article reported by the committee is preferable to the tenth article of the old Constitution.

Mr. BICKFORD—The article reported, it strikes me, is not only preferable for the reason mentioned by the gentleman from Schenectady [Mr. Paige], but I insist that it is an important provision contained in the article as reported, that sheriffs shall not be eligible for under sheriffs for the term succeeding which they hold their office. It is a complaint which has come to my ears (whether it has come to the ears of other gentlemen or not I do not know), that there is a system of "ride and tie," as it is called. For example, one man runs for sheriff, and appoints a certain man under sheriff. For the next term, the former under sheriff is a candidate for sheriff, and if elected, appoints as under sheriff the man who held the office of sheriff before. As it stands now in the Constitution of 1846 it is certainly liable to this objection and if there is any reason why the sheriff should not be eligible to re-election, it is certainly a reason why he should not be eligible to the office of under sheriff. There

are strong reasons indeed why he should not be eligible for re-election. The influence of his office may be exerted in a great many ways to secure the election of one who will appoint him under sheriff.

Mr. POND—Will the gentleman allow me to ask him a question?

Mr. BICKFORD—Certainly.

Mr. POND—Is not the reason just as strong that he should be ineligible to any other elective office—could not his power be used just as well to secure his election to any other office?

Mr. BICKFORD—I think not.

Mr. CONGER—I hardly think it to be a fair criticism which has been passed upon the first section of this article as reported by the committee, that it is prolix, or that, on comparing it with the corresponding article in the Constitution of 1846, it should be considered, in point of style, at a discount. In the first place, there has been a remarkable degree of care in keeping this article closely in harmony with the fundamental ideas of the corresponding article of the Constitution of 1846. I see an improvement in this. That section, as recommended by the committee, provides that besides the sheriff, who is the only officer, except the county clerk, mentioned in article ten of the Constitution of 1846, county treasurers and county clerks shall be elected by the people to their offices, and not left subject to legislative whim or appointment. Now, if gentlemen who admire the Constitution of 1846 will look carefully at the second section of article 10, they will find that the provision in regard to other officers not specially designated in the Constitution of 1846 is, to say the least of it, if not obscure, prepared in a manner which would meet the criticism of the honorable gentleman from Onondaga [Mr. Andrews]. I say this much, Mr. Chairman, because I think it is due to fairness and common sense of propriety that a committee who comes in here, having discharged its duty with sedulous care, and having departed in but one single iota from the corresponding article of the Constitution of 1846, not having followed the example of other committees, who proposed such radical and sweeping changes, that that committee should receive at the hands of the Convention an impartial and discriminating judgment. I do not think that wholesale denunciation is due, and I shall vote for retaining this section, if for no other reason than this: that it provides, in the same clause in which it provides for the continuance of the office of sheriff, clerks of counties, as elective offices, also for the election by the people of the officers of county treasurer and county clerk.

The question was put on the amendment of Mr. Andrews, and it was declared carried, on a division, by a vote of 53 to 33.

The SECRETARY proceeded to read the second section as follows:

Sec. 2. There shall be appointed in each county by the Governor, a district attorney, who shall hold his office for the term of three years, unless sooner removed by competent authority. The Governor may remove the district attorney for incapacity, neglect of duty, malversation, intemperance, turpitude, or crime, first giving to such

officer a copy of the charges against him, and an opportunity of being heard in his defense.

Mr. LOEW—I move that section 2 of article 10 of the Constitution of 1846, be substituted for the second section of the article as reported by the committee. By the substitution of the first section of article 10 of the old Constitution, for the first section of the article under consideration, this second section which provides for the appointment of a district attorney for each county by the Governor, has become entirely unnecessary, inasmuch as the election of that officer is provided for by the first section of the 10th article of the Constitution of 1846, as now adopted in lieu of the first section of the article reported by the committee. The committee, for some reason best known to themselves, have entirely omitted this second section of the old Constitution, in the article reported by them. I cannot understand why this was done. They say that they wanted to limit and restrict the power of the Legislature in regard to local matters, and transfer it to the local authorities, and yet in some respects they have in this article given the Legislature more power, than the Constitution of 1846 did.

Section 2 of article 10 of the Constitution of 1846 provides:

"All county officers whose election or appointment is not provided for by this Constitution shall be elected by the electors of the respective counties, or appointed by the boards of supervisors or other county authorities, as the Legislature shall direct. All city, town and village officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof as the Legislature shall designate for that purpose. All other officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct."

Thus giving to the people of the respective counties or towns, as the case may be, or to the local authorities the power to appoint or elect all those officers, for whose election or appointment the Constitution did not provide. This provision, as I said before, is entirely omitted in the article reported by the committee. The nearest approach to it I find in section four, which gives the Legislature almost unlimited power in respect to those officers. It says:

"All county and town officers (except judicial) which may be in existence on the adoption of this Constitution shall thereafter continue, with the powers, duties and incidents thereto pertaining, until abrogated or modified by law; and the incumbents of said offices, and also the several officers mentioned in this article, shall retain the powers and perform the duties pertaining to their respective offices at the time of the adoption of this Constitution until the same are changed or modified by law. The Legislature may, by general laws, create such new town and county officers, not inconsistent with the provisions of this Constitution, as the public weal shall require, abrogate such town and county offices as are not specifically established

by this article, regulate the election of all officers named in this article and provide for the election or appointment of such as are not herein named, prescribe the powers and duties of all county and town officers, except judicial; provide for the giving of security by any of said officers for the faithful discharge of their duties, provide for the removal of all county and town officers, etc."

Thus it will be seen that this section gives the Legislature power to abrogate any town or county office which may be in existence on the adoption of the Constitution; and to change and modify the powers and duties of the incumbents of such offices, as well as of the officers mentioned in said article, whenever it may see fit to do so. It further gives the Legislature power to create new town and county offices, and to provide for the election or appointment of the officers who are to fill them. As I have already observed, the section of the old Constitution, to which I have referred, provides that such new officers shall be elected by the electors of the counties, towns, etc., or appointed by the local authorities, as the Legislature may direct; whereas, this fourth section of the article of the committee leaves it entirely in the discretion of the Legislature as to who shall have the power of appointment, and in fact the Legislature may, if they choose, make the appointments themselves. Sir, under the section of the old Constitution I have offered as a substitute, or, rather, notwithstanding it, many laws have been passed which are obnoxious to a great portion of our people. Yet, notwithstanding that, I greatly prefer it to the fourth section reported by the committee, which I hope will be struck out when it shall be reached.

Mr. GOULD—Mr. Chairman, are there two amendments pending now?

The CHAIRMAN—Only one.

Mr. GOULD—Then I offer an amendment.

The SECRETARY proceeded to read the amendment, as follows:

SEC. 2. There shall be appointed in each county by the judges of the court of general sessions of the peace therein, a district attorney, who shall hold his office during the pleasure of such court.

Mr. ALVORD—I would ask for information from the Chair how the gentleman from Columbia [Mr. Gould] can offer this amendment when we have provided by the first section which we have adopted for the election of the district attorney by the people. He certainly cannot be in order in offering it until that question is reconsidered. Therefore this amendment, it seems to me, is out of order.

The CHAIRMAN—The point of order is well taken.

Mr. BARKER—I offer an amendment by way of substitute for the section:

The SECRETARY proceeded to read the amendment:

Substitute for section two:

All county officers whose election or appointment is not provided for by this Constitution shall be elected by the electors of the respective counties, or appointed by the boards of supervisors or other county authorities, as the Legislature shall direct. All town officers whose election or appointment is not provided for by this Constitution

shall be elected by the electors of such town, or appointed by such authorities thereof as the Legislature shall designate for that purpose.

Mr. BARKER—The object of this substitute, as offered by me, is to cover the provisions of sections 2 and 3. Section 2 has become inoperative by the vote of the committee making the office of district attorney elective. The amendment which I offer provides for the mode and manner of electing county and town officers. It does not in anywise create town or county officers. It leaves it entirely for the Legislature to define what officers shall exist in the counties and the towns, as it exists in the present Constitution. I have taken the exact language of section 2, omitting the provision for electing officers for cities and villages, as that is not embraced in this report, but is referred to another committee. I also omit the portion of the second section which relates to the appointment of other officers in these words: "All other officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed as the Legislature may direct."

Mr. PAIGE—I suggest that the substitute should embrace the whole section. If the second paragraph of the second section is stricken out, it will make, in the discretion of the Legislature, city, town and village officers whose election or appointment is not provided for in this Constitution, elected by the people or appointed as the Legislature may direct. It would be in entire contravention of the provision as contained in the Constitution of 1846, and against the general expression of the people in favor of the election of city, town and village officers. It would leave those officers in the discretion of the Legislature, to be elected or appointed. But if the gentleman will take the whole section as it stands, there will be no objection to it.

Mr. BARKER—I appreciate the suggestion of my friend, but at the same time that properly belongs to another article of the Constitution which we are framing. We are considering the creation of town and county officers other than judicial their election, appointment, tenure of office, compensation and duties. Now, it seems to me after we provide for this class of officers, there should be some general provision fixing the mode and manner of their election other than town and county officers, and that would embrace the paragraph which is referred to, and upon which a judicial construction has been had, and which excited considerable popular comment at the time. However, if it is proper to add that, I have no objection if it should appear in the Constitution in this article. One word further. The object of introducing this amendment at this time is to call the attention of the committee to the impropriety of making town officers constitutional officers; that should be left for the Legislature to create such officers as shall appear to be necessary from time to time, define their duties and fix their tenure of office, and only having a constitutional provision providing for the mode and manner of their election. Now, it is provided in section 3, for which I design to have this substitut-

ted, that certain town officers, embracing the lowest in rank, even that of overseer of the poor, shall be constitutional officers, and the next section provides that the Legislature shall have no power to abrogate these offices, nor any person to enlarge the duties of it or prescribe and diminish them. I insist this should be left to the Legislature. When we come to consider another branch of this report, as to the powers of the board of supervisors, it may then properly be considered whether that officer shall be a constitutional officer or not.

Mr. FOLGER—I wish to ask the gentleman why he has left out the words "or some division thereof?"

Mr. BARKER—It occurred to me that as to town officers there could scarcely be any elected in a division of the town.

Mr. FOLGER—I would suggest there are some towns which have town meetings by election districts, in pursuance of special acts of the Legislature. The Constitution, without that clause in it, might be construed so as to override those statutes.

Mr. BARKER—I consent to the suggestion of the gentleman from Ontario [Mr. Folger], and reinsert that. It will be then after the word "town" "or some division thereof."

Mr. HITCHMAN—Will the gentleman allow me to suggest to him the propriety of another amendment? I would suggest to the gentleman that between the word "such" and the word "authorities" that he insert the word "local," so that it will read "by such local authorities thereof as the Legislature shall designate for that purpose." I suggest that the reason for this is obvious. It is to do away with such action as the Legislature has evinced toward the county of New York in the tying up and grouping together of that county with other counties, and the appointment of officers outside of and unknown to that county.

Mr. BARKER—I prefer the gentleman should make that subject a separate amendment.

Mr. LOEW—In what respect does the amendment of the gentleman from Chautauqua [Mr. Barker] differ from the substitute I proposed?

The CHAIRMAN—It differs in several particulars. It does not cover the entire section. It does not contain the words "cities" or "villages."

Mr. BERGEN—There is one good reason, Mr. Chairman, why these town officers should not be fixed or designated in the Constitution. I find in the third section of the report of the committee that they make the office of overseer of the poor a constitutional office. In the county of Kings there are no overseers of poor elected; that office has been abolished by law years ago. Yet if we should adopt the principles laid down in this report, it would revive an office in the county of Kings which we have found long ago to be useless. The whole power there is lodged in the superintendent of the poor. This is a good reason, in my judgment, why we had better be governed by what is laid down in the Constitution of 1846, in relation to this subject, so that these offices, where they are unnecessary, may be abolished.

Mr. MASTEN—As I understand the amendment

of the gentleman from Chautauqua [Mr. Barker], it is simply striking out in this second section of the Constitution of 1846 the words "cities and villages," and also striking out the last clause of that section, and adopting it in every other particular. I favor that amendment. I am in favor of striking out in this place the words "cities and villages," because we are now considering the report of the Committee upon County and Town Officers, and I think it is well we should confine ourselves to these officers. By and by we will get a report from the Committee on Cities and Villages, and then we can better consider what shall be done in respect to the officers of those corporations. I am in favor of striking out the last clause in this section because, although if it should be desirable to be inserted in the Constitution, it seems to me that this is not the proper place for inserting it.

Mr. PAIGE—I want to make an explanation. I supposed the gentleman from Chautauqua [Mr. Barker] proposed to strike out the second paragraph of this second section. I understand now he intends to include it, therefore I withdraw my objection. He simply moves to strike out the last clause of that section.

Mr. MASTEN—And the words "cities and villages."

The PRESIDENT announced the question to be on the amendment of Mr. Barker, as amended, as follows:

Substitute for section two: "All county officers whose election or appointment is not provided for by this Constitution, shall be elected by the electors of the respective counties, or appointed by the boards of supervisors, or other county authorities, as the Legislature shall direct. All town officers whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such town, or of some division thereof, or appointed by such authorities thereof, as the Legislature shall designate for that purpose."

The question was then put on the amendment of Mr. Barker, and it was declared adopted.

Mr. HITCHMAN—In accordance with the suggestion of the gentleman from Chautauqua [Mr. Barker], I offer the amendment I suggested.

The SECRETARY proceeded to read the amendment as follows:

Amend section two by adding after the word "thereof," in the seventh line, "or appointed by such local authorities thereof as the Legislature shall designate for that purpose."

Mr. HITCHMAN—The necessity for the adoption of such an amendment as this must be apparent to every gentleman in this Committee. For years past the practice has prevailed in the Legislature of tying up and grouping together of counties and portions of counties for the purpose of overcoming this very section of the Constitution, that provides that local officers shall be either elected by local constituencies or appointed by local authority. And through that process of manipulation the city and county of New York have suffered grievously. Their rights have been invaded, and all that is held dear by the people has been taken from their control. Nothing, not even the poor semblance of a gov-

ernment, has been left to the people of that city. It is all centered here. There is no responsible head, no person to answer the inquiry of the taxpayer or citizen as to who is responsible for acts of mismanagement or errors of misgovernment.

Mr. ANDREWS—Will the gentleman allow me to ask him a question? I would ask him what force he gives to the word "thereof" which follows the word "authorities?"

Mr. HITCHMAN—That may have the force to cover the whole matter; but inasmuch as the Legislature for years past has disregarded it, I think it well to put the word "local," so that the matter might not admit of a mistake. For that reason, sir, and because we have suffered to the extent that we have, I ask that this Convention now will insert such a provision. It may be their case tomorrow, next year, or at some future time. These things beget retaliation, and a party may obtain power in this State that may visit upon the heads of these gentlemen that have been giving us such legislation, just such in return. The same measure that has been meted out to us may come back to them; never by my vote, never with my consent; for I believe that to the people of the counties belongs the right to select those who shall preside over them and take charge of their government. I am democratic in the broadest sense, but I know that such is the feeling of men where they have been subject to such government, that they in turn may visit it upon the heads of those who inflicted it. I ask gentlemen to insert this word in this section. I believe it ought to be; I believe it will strike out all the difficulties and prevent all such troubles as we have witnessed in regard to the city of New York.

Mr. HALE—I really cannot see what particular bearing the remarks of the gentleman from New York [Mr. Hitchman] have upon the question or how his amendment will remedy the grievance of which he complains. He refers to the fact that different counties of the State have been put together by the Legislature, and officers created for the division or district thus formed. It is known certainly to all professional gentlemen upon this floor that, where that has been done, the court of appeals has decided it to be constitutional, not because the word "local" was not inserted before the word "authorities," but because the officers in these districts were held not to be town, city or village officers. The amendment which the gentleman proposes would not have the slightest bearing upon the constitutional question. If the word "local" was there the Legislature might proceed to do just what it has done, and the authority of the court of appeals would be conclusive that the Constitution was not violated, because the officers that are created for such combination of cities or villages, are not city, town, or village officers. Now the word "thereof" meets the case. The word "local" does not give any more force to it. These officers must be appointed by such authority "thereof" as the Legislature shall designate.

Mr. MASTEN—I would ask the gentleman from New York [Mr. Hitchman], whether he had not better withdraw this amendment at the pres-

ent time. I am in favor myself, and will go with him as far as possible to put down these commissions.

Mr. HITCHMAN—I find, upon reading the subsequent section, the amendment is not applicable, and I wish to withdraw it.

The SECRETARY proceeded to read the third section as follows:

SEC. 3. There shall be elected in each organized town by the qualified electors therein, at such time as the Legislature may prescribe, one supervisor, one town clerk, one collector, one or three assessors as the electors may determine, and as many commissioners of highways and overseers of the poor, as may be prescribed by law. The supervisor shall hold his office for the term of two years, and the other officers in this section mentioned for the term of one year, unless sooner removed by competent authority.

Mr. BARKER—I move to strike out that section.

The question was put on the motion of Mr. Barker, and it was declared carried.

The SECRETARY proceeded to read the fourth section, as follows:

SEC. 4. All county and town officers (except judicial) which may be in existence on the adoption of this Constitution, shall thereafter continue, with the powers, duties, and incidents thereto pertaining, until abrogated or modified by law; and the incumbents of said offices, and also the several officers mentioned in this article, shall retain the powers, and perform the duties pertaining to their respective offices at the time of the adoption of this Constitution, until the same are changed or modified by law. The Legislature may, by general laws, create such new town and county offices, not inconsistent with the provisions of this Constitution, as the public weal shall require; abrogate such town and county offices as are not specifically established by this article; regulate the election of all officers named in this article, and provide for the election or appointment of such as are not herein named; prescribe the powers and duties of all county and town officers, except judicial; provide for the giving of security by any of said officers for the faithful discharge of their duties; provide for the removal of all county and town officers (except judicial), for whose removal provision is not otherwise made in this article; declare the cases in which any such office shall be deemed vacant, and provide for filling vacancies in office; but in case of elective officers, no person appointed to fill a vacancy, shall hold his office by virtue of such appointment, longer than the balance of the term in which such vacancy occurs.

Mr. BARKER—I move to strike out that section.

The question was put on the motion of Mr. Barker, and it was declared carried.

The SECRETARY proceeded to read the fifth section, as follows:

SEC. 5. All county and town officers shall reside within their respective counties and towns, and shall keep their respective offices at such places therein as may be directed by law. And all such officers shall be subject to indictment for malfeasance, misfeasance or neglect of official duty;

and upon conviction thereof, their offices shall become vacant.

Mr. BARKER — I move to strike out that section.

The question was put on the motion of Mr. Barker, and it was declared carried.

The SECRETARY proceeded to read the sixth section, as follows:

SEC. 6. The county supervisor and town supervisors chosen in each county, shall constitute a board to be known as "The board of supervisors of the county of _____," by which name they may sue and be sued; and in which capacity they may make and use a common seal, and enact ordinances and by-laws not inconsistent with the laws of the State. They shall meet stately, at least once in each year, at the county seat of their county, and may hold special and adjourned meetings; and shall have such powers, and perform such duties as a board, as may belong to and devolve upon boards of supervisors at the time of the adoption of this Constitution, or as may thereafter be prescribed by law. They shall appoint a clerk, who shall keep a journal of their proceedings, and transact such other business pertaining to his office as may be by them or by law required, and whose compensation shall be fixed by them, and paid from the county treasury.

Mr. HALE — I move to substitute, in place of that section, section 17 of article 3 of the Constitution of 1846, as follows: "The Legislature may confer upon the boards of supervisors of the several counties of the State, such further powers of local legislation and administration as they shall from time to time prescribe."

Mr. HADLEY — I offer the following as an amendment to the amendment offered by the gentleman from Essex [Mr. Hale]:

"There shall be in each of the counties of this State (except the city and county of New York), a board of supervisors, elected in such manner and possessed of such powers of local legislation relative to the internal affairs of said counties, and having such other powers and duties as the Legislature may from time to time by general laws prescribe."

Mr. CORBETT — There is an evident conflict of jurisdiction between two committees, viz.: Committee No. 7, on Town and County Officers other than Judicial, and Committee No. 12, on Towns, Villages, and Counties, their Organization, Powers, and Government. Either the one or the other of these two committees has certainly misapprehended the extent of its powers. The board of supervisors constitute the county government, and the definition of its powers and duties properly belongs to Committee No 12; and unless we propose to ignore Committee No. 12, I would suggest that this subject be referred to that committee. With all due respect to the chairman [Mr. Hadley] of the committee on which I have the honor to serve, I protest against putting in our report as an amendment to the report presented by Committee No. 7. I am perfectly willing that Committee No 7 shall perform the bulk of the labor; as a matter of pride, however, I would like that Committee No. 12 should at least be accorded the privilege of putting in a postscript. I therefore move that that portion of the

report made by Committee No. 7, relating to the powers and duties of supervisors, and now under consideration, be referred to Committee No. 12, the committee to which it properly belongs,

The CHAIRMAN — The motion of the gentleman is not now in order, there being two amendments already pending.

Mr. SMITH — When the gentleman from Onondaga [Mr. Corbett] shall have lived twenty years longer, he will probably be less sensitive, and he will learn that it is easier to make stump speeches than Constitutions. Now, sir, in behalf of the committee who have reported this article under consideration, I beg leave to say they have confined themselves strictly, as they understood it, within the limits prescribed by the Convention. Their duties are stated in those words.

Mr. CORBETT — Will the gentleman permit me to ask him a question? By what straining of language can he call a board of supervisors a county officer?

Mr. SMITH — I propose to answer it without straining language. The duties assigned to this committee are in these words: "On town and county officers, other than judicial, their election or appointment, tenure of office, compensation, powers and duties." Now, sir, under the present Constitution and under the present law, supervisors are town officers, and boards of supervisors, acting in their corporate capacity, are county officers. The committee were wholly unable to determine how they could discharge their duties without considering the duties of supervisors, not only in their individual capacity as representatives of the town, as town officers, but their duties as members of the board. If the gentleman from Onondaga [Mr. Corbett], in his wisdom, can determine how we could have discharged our duties without considering the duty of supervisor in both capacities, he will then have solved a problem which we were not able to solve. Now, whether the subject properly belongs to the other committee or not, under the language assigning their duties, this committee did not feel called upon to determine and have not undertaken to determine; but have aimed simply to perform the duties assigned them, faithfully and conscientiously, not wishing to trespass on the ground assigned to other committees, and we believe we have not. I have a single word to say in relation to the amendment suggested to this article. It is proposed, as I understand, to substitute the present article of the Constitution, which provides that "Legislatures may give the boards of supervisors power of local legislation." All I have to say in regard to that is this: If the Convention are content to leave that matter where it has been, and leave things as they are, that is a very appropriate provision, of course, and an easy way to dispose of the matter; but if they wish to give more power to local boards and take it away from the Legislature, the provision will not answer the purpose, because it has not answered such purpose in times past. There has been very little power given to the local boards under the Constitution as it stands; and if the Legislature is inclined to retain power which may be and is used for corrupt purposes, the only remedy is to take that power from them. If we do

not make it exclusive in the board, it rests with the Legislature just where it has been. The provision which it is now proposed to strike out, was made in obedience to what was supposed to be a general demand to transfer this power from the Legislature to the boards, and make it exclusive, so that the Legislature could not act on these matters which are given to the board. That is the explanation the committee offers for making the provision. I wish to say a single word further, while I am up, in regard to this amendment. The gentleman from Chautauqua [Mr. Barker] and the gentleman from New York [Mr. Loew] seem to have fallen into the error that because certain sections are numbered in this article—number 1 and 2, etc., as they are numbered in the present article, that they are intended to be substitutes for them in the order in which they stand. That was not the design. Section 2 in the article reported by the committee had reference to the appointment, tenure of office, etc. of district attorney, and nothing else; but, as that office was incorporated in the first section, as amended, making the office elective, the second section should be stricken out; and the amendment offered by the gentleman from New York [Mr. Loew], and advocated by the gentleman from Chautauqua [Mr. Barker], should have been a substitute for section 1. The plan of the article is this: Section 1 provides for county officers, section 2 provides for the appointment of district attorney, section 3 prescribes town officers, and section 4 is substantially a substitute for sections 2, 3, 4, and 5 in the old Constitution. That was the plan of the committee, and as this mistake seems to have been made by gentlemen I wish it to be corrected and not to have it supposed that the committee thought, in reporting section 2, that they were making a substitute for section 2 in the old Constitution.

Mr. CORBETT—Before proceeding any further I would request the gentleman from Seneca [Mr. Hadley] to withdraw his amendment. If gentlemen will turn their attention to rule seven they will see that it relates to "town and county officers, their powers and duties." Now, I admit that it is the province of this committee to define the duties of a supervisor as a town officer, but instead of that the committee has followed him into the board of supervisors and defined his duty there. Not only that, but they have also pointed out the mode of the organization of the board of supervisors and defined its duties—a subject which, I think, does not properly come within the jurisdiction of that committee. They have trenchanted upon the powers of Committee No. 12; and, while I commend the gentleman's zeal, I desire him to understand that I have so much respect for the report of the committee on which I have the honor to serve that I would prefer not to associate it with his, especially when I consider the treatment his report has received thus far. I choose to have it stand on its own merits, and come in as an independent report. I desire to say, further, without at all indicating the character of the report which will come from Committee No. 12, or anticipating its formal presentation to the Convention, that I believe our treatment of this subject will be fully in conso-

nance with the wishes and sentiments of this body, as I gather them from the debate so far, and I think the committee will be ready to report tomorrow morning. As a matter of courtesy, then, I ask that the further consideration of this question be postponed until we hear the report of Committee No. 12.

The CHAIRMAN—The Chair will inform the gentleman that his amendment is not now in order.

Mr. CORBETT—Then I move that the committee rise, report progress, and ask leave to sit again. The CHAIRMAN—That motion is in order.

The question was put on the amendment of Mr. Corbett, and it was declared carried, on a division, by a vote of 46 to 43.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. BELL, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on Town and County Officers, other than Judicial, etc., had made some progress therein, but, not having gone through therewith, had instructed their chairman to report that fact to the Convention, and ask leave to sit again.

The question was put on granting leave to sit again, and it was declared carried.

Mr. FOLGER—I ask leave of absence for Mr. M. H. Lawrence, of Yates county, for the rest of this week.

No objection being made, leave was granted.

Mr. BERGEN—I move that we now adjourn.

The question was then put on the motion of Mr. Bergen, and it was declared carried. So the Convention adjourned.

WEDNESDAY, August 14, 1867.

The Convention met at 10 o'clock A. M.

Prayer by Rev. I. N. WYCKOFF.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. CLINTON presented the petition of C. T. Hasbrook, and fifty-two others, inhabitants of Hughsonville, for the separate submission of a clause prohibiting the sale of intoxicating liquor as a beverage.

Which was referred to the Committee on Adulterated Liquors.

Mr. HAND presented the petition of the Lisle Temperance Association, comprising over six hundred and fifty members, citizens of Lisle and the adjoining towns of Broome county, on the same subject.

Which took a like reference.

Mr. VEEDER presented the petition of Henry Reitzheimer, and four hundred and fifty-six others, citizens of Brooklyn, asking for the passage of uniform laws in reference to the sale of liquors.

Which took a like reference.

The PRESIDENT presented a communication from the commissioners of taxes and assessments of New York city, in answer to a resolution adopted by the Convention.

Which was referred to the Committee on the Finances of the State, and ordered to be printed.

The PRESIDENT also presented a communication from the State Engineer and Surveyor, in answer to a resolution adopted by the Convention.

Which took a like reference, and was ordered to be printed.

Mr. HADLEY—The Committee on the Organization of Counties, Towns and Villages, their Powers, etc., beg leave to present the following report, being a report of the majority of that committee.

The SECRETARY proceeded to read the report, as follows:

Your Committee on Counties, Towns and Villages, their Organization, Government and Powers, believing it unwise to make changes in the fundamental law of a State, unless experience has demonstrated the necessity of such changes, respectfully

REPORT:

That they have been unable to discover any demand or necessity for any change in the organization or government of the counties, towns or villages within this State, which is not within the power of the Legislature to make, and therefore your committee do not recommend any amendment of the existing Constitution in relation to those subjects.

Your committee, in the discharge of their duty, in view of the growing tendency to create debt, see, or think they see, a necessity for imposing some restrictions upon the power of counties, towns and villages to loan their credit to corporations.

Your committee also believe that there is a demand and necessity for increasing the powers of boards of supervisors to legislate in relation to the local and internal affairs of their respective counties, and the towns and villages therein, and in accordance with these views, have instructed their chairman to report the following provisions and recommend the adoption thereof.

Dated, August 14, 1867.

S. G. HADLEY,

Chairman,

LORING FOWLER,

NORMAN M. ALLEN,

PATRICK CORBETT.

SEC. —. There shall be in each of the counties of this State (except the city and county of New York) a board of supervisors, elected in such manner, and for such period, and composed of such numbers, as is or may be provided by law. The boards of supervisors shall possess and exercise the power to legislate in relation to the local and internal affairs of their respective counties and the towns and villages therein: Subject, however, to such rules and regulations as the Legislature may prescribe; and it shall be the duty of the Legislature at the first session thereof after the adoption of this Constitution to prescribe such rules and regulations by general laws.

§ —. No county, town, or village now existing or hereafter organized, shall in any manner give any of its property or money, or loan its credit to or in aid of any individual, association, or corporation; nor directly or indirectly become a stockholder in any association or corporation; nor shall any county, town, or village, in any manner guarantee any obligation of any individual, association, or corporation.

§ —. Counties, towns and villages severally

possess and exercise such powers of local taxation as now is, or hereafter may be prescribed by law.

The undersigned, believing that the provisions of the present Constitution relative to legislation by boards of supervisors, are sufficient, does not concur with the majority of the committee in recommending any change in that respect.

He only concurs in that portion of the report which recommends a similar restriction of the power of towns and counties to loan its credit or money to individuals or corporations, etc., as the Convention has already adopted with respect to the power of the Legislature in that respect.

Dated, August 14, 1867.

WILLIAM WICKHAM.

I concur in the majority report except as to the provision for excluding the city and county of New York from the operation of the proposed section, believing that that subject can be better considered on the coming in of the report of the Committee on Cities.

CHARLES LOWREY.

Mr. E. BROOKS—I move the report be referred to the Committee of the Whole.

The PRESIDENT—It will be if so desired. The entire report will be referred to the Committee of the Whole.

Mr. M. I. TOWNSEND—The standing committee on the Pardoning Power respectfully report the section attached hereto, and recommend that the same be adopted as a section of the article of the Constitution in relation to the Executive.

The SECRETARY proceeded to read the report, as follows:

The standing committee on the Pardoning Power respectfully report the section attached hereto, and recommend that the same be adopted as a section of the article of the Constitution in relation to the Executive.

The section recommended by the committee is the fifth section of the fourth article of the present Constitution of the State, and differs only in details from the provisions on the same subject in the Constitution adopted in 1822.

By the present Constitution and by the third section reported by the Committee on the Governor and Lieutenant-Governor, and adopted by the Committee of the Whole of this Convention, it is made the duty of the Governor to "take care that the laws are faithfully executed." This responsibility is not shared by the Governor with any other functionary. And as this duty is devolved on him alone, it is the Governor alone who is prepared to judge how far it may be safe, from time to time, to remit the penalties imposed upon those convicted of crime, consistently with the preservation of the public peace and with the general "faithful execution of the laws." It was this consideration, doubtless, which originally led the people of the State to invest the Governor with the exclusive power of granting pardons, and the same consideration has doubtless led to the lodging of the power of pardon in the same hands in twenty-nine other of the States of this Union.

The vast and constantly increasing population of the State, modified as it is by our peculiar commercial and geographical position, furnishes a

large number of cases of application for pardon annually, for investigation and decision, and necessarily imposes upon the Governors of the State an amount of labor truly formidable. The committee would gladly have adopted some means, were any deemed safe and practicable, by which to lighten the burdens thus resting upon the Executive of the State. But the committee were unable to devise any scheme which seemed to them so likely to secure the various objects sought to be accomplished by the creation of a power for the remission or modification of sentences imposed upon persons convicted of crime. In most if not all of the States where a Council exists, whose duty it is to act with the Governor in relation to the granting or refusing of pardons, the duties of the Council are merely advisory, and the final responsibility of granting or refusing the pardon rests with the Governor. So that the Governor must, in those States, fully investigate every application presented, and perform the additional duty of participating in the discussions of a collection of gentlemen who can only give advice, but who are really to share no part of his responsibility; so that the establishment of a Council to act in connection with our Chief Executive in relation to pardons would only tend to largely increase executive labor and care. The committee consulted ex-Governors Fish, Morgan and Seymour, and His Excellency Governor Fenton, and all these gentlemen, with the exception of ex-Governor Fish, fully concurred in the view last expressed.

Ex-Governor Seymour was kind enough to come from his home to the Capitol and personally explain to the committee the working of our present system, as witnessed by himself during his official experience, and to state to the committee that, in his opinion, although the possession of the pardoning power imposed upon our Governors the most laborious and painful duties which a man can be called upon to discharge, yet from the nature of our government the power could not be safely lodged in other hands, nor its responsibility be safely divided. That all which, in his opinion, could be safely done to lighten a Governor's labors would be for the Legislature of the State to provide the means from time to time to enable the Governor to ascertain, through a suitable clerk or agent, the truth or falsehood of the allegations on which the applications for pardon are based. The committee concur in the view that such aid should be furnished to the Executive, but as they believe the Legislature will always provide adequately for the necessary expense of the Executive department they have not deemed any new constitutional provision necessary to secure the end indicated.

An examination of the statistics furnished shows that the whole number of pardons granted during the last twenty years is 2,915; of this number 766 were pardons for petty offenses of persons confined in jails and penitentiaries, and who were doubtless mostly convicted in courts other than courts of record; so that the whole number of pardons, for all grades of offenses, have averaged less than one hundred and fifty per year for the last twenty years. Another fact has an

important bearing upon the subject under consideration: the whole number of convictions in courts of record during the last twenty years is 35,572, while the whole number of pardons, other than from jails and penitentiaries, was but 2,149, and the whole number from all places but 2,915, or not more than one in fifteen of the persons convicted in courts of record; and little would be hazarded in saying that the proportion of persons pardoned for convictions in inferior courts would be much less. The whole number of applications for pardons during the last sixteen years is 5,645, or an average of about 353 per year; so that it appears that less than one-half of the applications for pardon have been successful. In a word, something in the cases of one in six or seven of those convicted in courts of record has induced an application for pardon, and one in fifteen of those so convicted has been successful in his application. But it must not be supposed that the pardons granted have relieved the persons pardoned from all punishment. It will be found that it has been exceedingly rare that any person has been pardoned until after suffering a considerable portion of the punishment imposed by the court, and in most instances only after the term of imprisonment had more than half expired. What is called pardon is really a remission of a portion only of the sentence imposed.

In many cases convictions have been had for offenses, the punishment for which as prescribed by law was five or ten years, where an examination of the case showed that but little moral guilt comparatively was really involved in the act which caused conviction; but the court had no power to impose a less sentence than imprisonment for five or ten years, and although the judge imposed the sentence required by law, both the judge and district attorney have united in a recommendation for a pardon at an earlier day than the expiration of the sentence. Another frequent cause of pardon is the failure of health in consequence of imprisonment in the case of persons who were not known as old offenders. In looking over the history of pardons in this State for the last twenty years, the committee believe that it will be found that the power has been very carefully, judiciously and conscientiously used, and that although cases can be found where the exercise of clemency has set at liberty most wicked and undeserving criminals, such cases have occurred through the fault of the neighbors of the criminal too readily joining in recommendations too favorable to the prisoner. But these cases have been so rare as to give no occasion to fear that the public interest will suffer by leaving the pardoning power in the hands of the same functionary where it has rested for the last forty-five years.

ALBANY, August 13th, 1867.

MARTIN I TOWNSEND,
Chairman,
ALEMBERT POND,
JUDSON S. LANDON,
ELIZUR H. PRINDLE,
(By direction.)
M. H. LEE,
ELBRIDGE T. GERRY.

"Sec. — The Governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offenses except treason and in cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason he shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the Legislature each case of reprieve, commutation, or pardon granted; stating the name of the convict, the crime for which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

Mr. M. I. TOWNSEND—The Committee upon the Pardonng Power make a supplemental report in respect to two resolutions which were referred to them for consideration and examination, one offered by Mr. Bickford and the other offered by Mr. Lapham, both looking to the establishment of an inferior tribunal for the granting of pardons in many cases. The committee have come to the conclusion, and have considered the subject of these resolutions, and have reported on them in their principal report; and they now ask to be discharged from the further consideration of the subject, and that it be referred to the same Committee of the Whole having charge of the principal report.

Mr. DALY—Will the gentleman allow me to ask him a question? As I understand the report, the proportion of pardons to crimes is as two thousand to thirty-two thousand. Am I right in that?

Mr. M. I. TOWNSEND—It is not strictly so. The applications for pardon are only reported since 1849, including a period of seventeen years, while the convictions are reported for twenty years, for three years more. The number of convictions in twenty years are thirty-five thousand. The pardons are about twenty-nine hundred in all, and the convictions in the courts of record are thirty-five thousand and odd, and the pardons of persons supposed to be convicted in courts of record amount to about twenty-one or twenty-two hundred.

Mr. DALY—The question I desire more particularly to ask my friend from Rensselaer [Mr. M. I. Townsend] is this: Have the committee ascertained the nature of the crimes pardoned in the two thousand pardons or three thousand pardons, as compared with the thirty-two thousand convictions, it being a matter of familiar knowledge that thirty-two thousand convictions embrace all classes of offenses that are capable of pardon? The question I propose more particularly to ask for the information of this Convention in passing upon this important question is, whether the committee can give us any information as to the nature or degree of the crime to which pardons have been extended?

Mr. M. I. TOWNSEND—I think the gentleman from New York [Mr. Daly] will find in the report from the Governor, on our files, the query that he propounds substantially answered. It is printed

in the files (I do not remember the document), and also in volume 2 of the Manual.

Mr. TAPPEN—I offer a resolution.

The SECRETARY proceeded to read the resolution as follows:

Resolved, That the several standing committees not heretofore reporting, present their reports to the Convention on or before the 21st of August, unless otherwise directed by the Convention.

Mr. HARRIS—I rise to debate that resolution.

The resolution, giving rise to debate, was laid on the table.

Mr. CHESEBRO—I offer a resolution.

The SECRETARY proceeded to read the resolution as follows:

Resolved, That the Senate Committee, who have reported to this Convention the testimony in regard to the management of the canals of this State, and the departments, etc., contained in Document No. 40, be requested, as soon as practicable, to furnish to this Convention the evidence taken by them upon those subjects since the date of their report, and also a report of their conclusions upon said evidence, and that the same be printed for the use of this Convention.

Laid over under the rule.

Mr. MORRIS—I offer a resolution.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That the standing committee on the Powers and Duties of the Legislature be directed to consider the advisability of requiring the Legislature to pass laws allowing divorces from the marriage tie, for adultery, cruel and inhuman treatment, habitual drunkenness, and desertion for seven years, in addition to such other causes as the Legislature may deem good and sufficient.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. POND—I offer a resolution.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That the Committee on Revision, to whom has been referred the proposed article "on the Organization of the Legislature," etc., be instructed to amend section of said article, by inserting therein, after the word "route" in the fourth line of said section, and before the word "the," the following: "But the members of the Senate, when the Senate shall sit in the court for the trial of impeachment, shall receive such compensation therefor as may be provided by law."

Mr. GREELEY—If that is a resolution of instruction, I rise to debate it. If it is simply a resolution of inquiry, I shall not.

The resolution was laid over under the rule.

Mr. MERRILL—I offer the following resolution:

Resolved, That debate in Committee of the Whole on the article now under consideration be limited to ten minutes to each speaker, and to five minutes in the Convention, and that in Convention but one speech in favor and one against each amendment proposed shall be permitted.

Mr. FOLGER—I propose to amend the resolution, as follows:

Strike out all after the word "Convention" first occurring.

The question was put on the amendment of Folger, and it was declared carried.

Mr. KRUM—I move to strike out "ten minutes," and insert "twenty minutes in the Committee of the Whole."

Mr. MERRILL—My object was not so much to limit the time to ten minutes as to fix some limit; and the time I have named seems to me ample. Let the Convention fix what time it pleases.

The question was put on the amendment of Mr. Krum, and it was declared lost.

The question then recurred on the original resolution of Mr. Merrill, as amended, and it was declared carried.

Mr. M. I. TOWNSEND—I want to ask leave of absence for myself for ten days, commencing to-morrow.

Mr. BICKFORD—I want to hear some reason. **SEVERAL DELEGATES**—No, no.

The question was then put on granting leave of absence to Mr. Townsend, and it was declared carried.

Mr. N. M. ALLEN—I desire to ask leave of absence for myself until Tuesday next.

No objection being made, leave was granted.

Mr. BARKER—I ask leave of absence for Mr. Bowen, of Niagara, for the remainder of this week.

No objection being made, leave was granted.

Mr. LANDON—I offer a resolution, and I ask that it may lie over.

The **SECRETARY** proceeded to read the resolution, as follows:

Resolved, That the Committee of Five, upon the Revision of the Form and Phraseology of the Constitution, be instructed to strike out the words "four years," and insert "two years" as the term of office of Senators, in the article adopted by the Convention relative to the Legislature, its Organization, etc., and adapt the article to correspond with this alteration.

Which was laid on the table.

The Convention again resolved itself into the Committee of the Whole on the report of the Committee on Town and County Officers, other than Judicial, their election, etc., **Mr. BELL**, of Jefferson, in the chair.

The **CHAIRMAN** announced the pending question to be on the amendment of Mr. Hale to the sixth section of the report, to strike out that section and insert the one in the present Constitution, as amended by Mr. Hadley, of Seneca.

Mr. HALE—When I proposed the amendment I did not do so from any want of respect to the committee or want of appreciation for what they have done. I think the article reported bears the marks of being very carefully and very well drawn, but the theory upon which the committee have proceeded is one I cannot approve. Their theory is that it is expedient to confer upon boards of supervisors additional and exclusive powers of legislation. My own impression is that such a measure, instead of being a check upon corruption here, would only tend to diffuse it more generally throughout the State, and that not much additional power should be conferred upon boards of supervisors. It may be that there are some subjects upon which their jurisdiction might be extended, but the present article of the Constitution, section 17 of article 3, enables the

Legislature to confer such power of local legislation on the administration as they shall from time to time prescribe.

Mr. CORBETT—I rise to a point of order. I understood the amendment was withdrawn last night by the gentleman from Seneca [Mr. Hadley], and I do not understand the gentleman offers it this morning.

Mr. HALE—The amendment was offered by myself and was not withdrawn by me.

The **CHAIRMAN**—The Chair decides the point of order not well taken. The gentleman from Essex [Mr. Hale] will proceed.

Mr. HALE—I was about to say that this seventeenth section of the third article enables the Legislature to confer whatever power of local legislation and administration they may see fit to on these boards, and that, it strikes me, is ample for the purpose desired. The substitute offered by the gentleman from Seneca [Mr. Hadley] I have no personal objection to. I would accept it as an amendment to my proposition; but I think there is a disposition in this committee to retain the language of the old Constitution so far as it can be done. I prefer therefore to let a vote be taken on that substitute, and if it is adopted by the committee I shall support it.

Mr. E. BROOKS—I hope the amendment of my friend from Essex [Mr. Hale] will not be adopted by this committee. We have been some two months and a half in session in this Convention, and while the committees of this body, so far as they have reported in the discharge of their respective duties, have been building up, the Convention itself has just as rapidly been pulling down, so that what has been constructed by one part has been destroyed by the other. The indication, therefore, as far as the action of this Convention goes, is that the Convention itself has very little respect for the action of its committees. Now, sir, my hope has been that in a report such as the one now under consideration, and the one which was made this morning by the gentleman from Seneca [Mr. Hadley], to see some great work accomplished in preventing those legislative abuses which have been the subject of general complaint for a great many years past in this State. I have very little confidence in any good which will grow out of these high-toned expressions of morality,—the common-place moralities expressed in regard to the duty or action of the Legislature of this State, and I have still less confidence that any good will result from those penal enactments which have been adopted in the extra-judicial and judicial oaths which have been prescribed here for our consideration. I believe that to accomplish good legislation you are to take from public men the power to do evil. You are so to act here that our legislators will not have the temptation to do evil; and to accomplish so important a result as this, you are to abridge, in a very large degree, the powers of the Legislature itself. Now, sir, the amendment which is pending, and which proposes to re-enact that provision of the Constitution of 1846 which says that "the Legislature may confer upon the boards of supervisors of the several counties of the State such further powers of local legislation and administration as they shall from time to time prescribe,

will not accomplish any substantial good. Sir, my answer to my friend from Essex [Mr. Hale] is precisely this: that for twenty years the Legislature of this State has had power to prevent vicious legislation and has failed entirely to exert that power, and now to re-enact this provision of the Constitution of 1846, is to leave things precisely as they are, and rather invite than to abridge those abuses of which there is an universal complaint throughout the State. Now, sir, in looking over the reports upon our files, I find that there were about two hundred and fifty bills introduced into the Legislature last year and affecting the interests of the city of New York. I find there were seventeen hundred bills introduced into the Legislature of 1866, and about one thousand of that number were signed by the Governor, and that they cover over two thousand folio pages. The gentleman from Ontario [Mr. Folger] having a very large experience in the Legislature of this State has said, and I have no doubt said very truly, that of this enormous list of acts not fifty of the whole number related to important public questions. Now, sir, if these things are to continue in the future as in the past, there is no hope of any redeeming legislation, unless this Convention takes a stand here, and now, to prevent this excess of legislation by conferring that degree of confidence upon the supervisors of the several counties which shall prevent this abuse. Sir, so far as I know, the wishes and will of my constituents, as a whole they have great hope in transferring power from the city of Albany—from the Legislature of the State—to these local boards. They believe there will be great reform if this is done; and I believe if we re-enact the provision of the Constitution of 1846, we extend an invitation to continue the evil. I, therefore, most earnestly hope the attention of the committee will be drawn to this proposition, and that its judgment will be against the re-enactment of the provision which it is proposed to restore in the motion now pending.

Mr. HADLEY—If in order, I would like to substitute the section which I had the honor to present this morning in the report of the committee for the substitute which I offered last evening. I think the section contained in the report presented this morning is a little more guarded and a little more amplified from that of last night, although it is substantially the same. There is a little difference in the phraseology. I therefore move to substitute that for the section proposed by me last evening.

The SECRETARY proceeded to read the section referred to by Mr. Hadley in the report presented by him this morning, as follows:

There shall be in each of the counties of the State (except the county of New York) elected in such a manner and for such a period as may be provided, a board of supervisors, who shall possess and exercise the power to legislate in relation to local and internal affairs of their respective counties and towns, subject, however, to such rules as the Legislature may prescribe; and it shall be the duty of the first Legislature after the adoption of this Constitution to prescribe such rules and regulations by general law.

Mr. HALE—I accept it.

Mr. RUMSEY—I offer the following amendment:

SEC. —. The Legislature shall confer upon the boards of supervisors of the several counties of the State such powers of local legislation and administration as it shall from time to time, by general laws, applicable to all the counties in the State prescribe, and while such powers remain in the boards of supervisors, the Legislature shall not exercise any portion thereof. The Legislature may alter, modify or repeal such general laws.

Mr. RUMSEY—There is a good deal of difficulty in settling upon what is a safe rule to prescribe with regard to the powers of the board of supervisors. It is manifest that with the little experience we have had with regard to the exercise of this power by these boards, we have no knowledge by which we can be guided in bestowing this power upon these officers. It is and has been a mere experiment, and I apprehend there are very few men willing to transfer this alleged corruption that is charged upon the Legislature from Albany to the various counties in this State. I am not one of those who believe that there is as much corruption in the Legislature as is charged upon them, and think that a large share of the corruption charged at the door of the Legislature, belongs to those outside of it. But that is not the question here. It is enough to say it is a mere experiment, to trust the exercise of legislative power to the board of supervisors; and I, for one, am unwilling to trust absolutely and arbitrarily the exercise of this power which would thus be conferred upon them, and cannot be taken away until the Constitution has been changed. For that reason I think it is wise that we leave to the Legislature, as we have heretofore left to them, the power to confer upon the board of supervisors the right to control such local legislation as may be properly conferred on the several counties and reserve to the Legislature the right, if it should be found that it operates prejudicially in the several counties, to reclaim to the Legislature that power which is thus proposed to be given to them. I would say further that this amendment, which I have offered as a substitute, is a proposition which the Committee upon the Powers and Duties of the Legislature have thought long upon, and had concluded to offer it as a portion of their report, but as this subject comes up here now, by their consent I offer it in this place.

Mr. BARKER—I wish the gentleman [Mr. Rumsey] to state the difference between his amendment and the one offered by the gentleman from Seneca [Mr. Hadley]. I cannot discover the difference.

Mr. RUMSEY—There is a difference in this regard—that the amendment of the gentleman from Seneca [Mr. Hadley] provides that the board of supervisors shall have this power any way. It is to be controlled and affected to some extent by the Legislature, and the Committee on the Powers and Duties of the Legislature would provide that the Legislature shall have power to give it to them and reclaim it if found expedient.

Mr. CORBETT—The very distinction named by the gentleman from Steuben [Mr. Rumsey] was

considered in the committee, and we came to the conclusion that if it was left optional with the Legislature to confer upon the board of supervisors this power, none at all would be conferred. We have, therefore, reported affirmatively that the boards of supervisors shall, in the first instance, have jurisdiction over local questions, subject to whatever rules and regulations the Legislature may see fit to prescribe. There is no officer known to our system of government whose relationship is more directly to the people than the supervisor. There is no portion of our system of government so amenable to public sentiments as the board of supervisors. All the statements we have heard in this hall about corruption in the Legislature have been accompanied by the suggestion that the only remedy was to limit the jurisdiction of the Legislature over local subjects. Therefore, we propose by this report to recommit to the local authorities jurisdiction over local questions, so that the village shall control village affairs, and the town town affairs, the county county affairs, and confine the legislation at Albany to the general interests of the State. This is the proposition that the committee propose, and I think it will recommend itself to the wisdom of this Convention.

Mr. FOLGER—The objects sought for by this amendment, it appears to me, are twofold; one is, to diminish the bulk of legislation here in Albany, and the other is to diminish evil legislation here in Albany. Now, will it reach those ends? Gentlemen say that, although there has been a clause in the Constitution of 1846, conferring upon the Legislature the power to give to boards of supervisors the ability to legislate for localities upon questions affecting only their county, that power never has been exercised by the Legislature. To some extent it never has been exercised, but that does not prove that the question of exercising it has never been mooted and considered, and the difficulties of exercising it proved. I have seldom known a winter in which the question has not been mooted, whether it would be better to adopt general laws which would confer upon the board of supervisors some greater power of local legislation, and I have never known it mooted without it received opposition from different quarters, from the fact that boards of supervisors, in the opinion of certain gentlemen, were not a fit depository for extensive power of legislation. In the first place they say, and I think they say truly, that to give legislation to a single board—to one law-making power—to one body—is an entire denial and subversion of the whole theory of legislation in a free government, which requires two bodies, and sometimes a *quasi* third body, i. e., the Executive, with a veto power, to be mutual checks upon hasty and improper legislation. It is quite certain that if such theory is good, you cannot achieve the practical effect of that theory by giving legislative power to boards of supervisors. In the next place, waiving the consideration to which I have just adverted, the power you can possibly confer upon boards of supervisors of local legislation must be very much restricted and circumscribed. It can only relate to those things that rise within territorial boundaries

within which such boards can properly have jurisdiction, and must be confined rigidly within county limits. Take the case, if you please, of the incorporation of a village, which it is said is a mere local matter, and which, so far as territory is concerned, generally is a mere local matter. How many interests outside of the county bounds may be affected by it? The ownership of real estate in a village, the ownership of personal estate affected by its charter and by-laws, is not confined to the territorial limits of the village. There may be persons living all through the State who may be interested in the village government and its effects, in the taxes and assessments, the grading of streets, and all the acts of such a government which may seriously affect the real and personal estate of non-residents. I give this as an instance of what at first blush we would call local legislation, which, when you look at it more closely, is, to an extent, legislation more than local. Do you then, by local legislation, mean only that which shall affect merely the residents of the county? If you do, you see at once how much you circumscribe the power of boards of supervisors. When you begin the consideration of such a law, the first question is: What is the proper definition of "local?" Legislators must fix that definition before they can determine what amount and scope of legislative power may well be given to boards of supervisors. Now, as to the amount of local legislation, if we look at the session laws of 1866, we find that out of nine hundred and ten laws passed in that year, three hundred and twenty-four of them, over one-third, were for incorporating or amending the charters of different associations. Now, why is this? We have in the Constitution of 1846 a provision that corporations may be formed under general laws, and shall not be created under special acts, except for municipal purposes, and in cases where in the judgment of the Legislature, the object of a corporation cannot be attained under the general law. In my judgment here is the root of the difficulty, and in an amendment of this provision will be found the true method of repressing the bulk of legislation in Albany. That method is to confine the Legislature rigidly to the enactment of general laws, to thus confine it by an imperative injunction in the Constitution to that effect; not to say it shall pass general laws, and then, as if afraid of the effect of that injunction, to add to it a clause which gives to the Legislature the power to step outside of that prohibition whenever they see fit. Take an instance. Immediately after the adoption of the Constitution in 1846, a general law was passed (amended almost every winter since) providing for the incorporation of benevolent, scientific and religious societies. One to read it and its many amendments would think that it and they were broad enough to cover all the cases which could possibly arise. But one or two phrases in it, by allowing the Legislature to use the discretion given by the Constitution, has given rise to a vast amount of legislation. One of those phrases is: All such associations shall be composed of citizens of the United States. Now, in Westchester county, they want an act of incorporation for a benevolent society and they want a special charter, for what no one can tell,

they cannot tell themselves, but they come here with a set of incorporators and one of the party is an *alien*, and we say, "Why do you not incorporate under the general law," and they say, "Some of our incorporators are aliens, and your general law forbids that," and so by that or some other as small device the discretionary power of the Legislature is appealed to and it is coaxed to step outside of the general law and grant this private act of incorporation, and you will see in looking at the Laws of 1866, under the title of "corporations," that almost nine hundred and twenty-four of those associations might just as well have been incorporated under some general law by filing the certificate in the Secretary of State's office. Now let me say that for the last two years the committees on charitable and religious societies in the two Houses of the Legislature reported I do not know how many of these private acts. I do not think a score would cover the bills to enable churches to sell real estate, and every lawyer in this Convention knows it is the easiest thing in the world for such a corporation to go to the supreme court and acquire by a very simple process, the power of selling its real estate. These committees reported in favor of them because they had this discretion by the Constitution. I might go on to state instance after instance where special legislation is sought for, where the end might be achieved under the general law, provided the Legislature were forbidden to pass such special law, when a general law might answer the purpose.

Here the gavel fell, the time of the speaker having expired.

Mr. GREELEY—I rejoice that we find ourselves at last face to face with the main question, which is, whether this Convention shall prove a reforming body or not. The intimations have not been favorable thus far; but to-day we shall be able to make our minds up decidedly on the question. Now, in the first place, it seemed to me, when we came to a matter of legislation we should have to require every association that comes to this Legislature for the amendment of an act, or anything, to pay a certain sum of money into the treasury of this State, and send a certificate to the clerk that it has done so before its bill shall be allowed to come on the table of either house. But let us look at the question directly before us. What is the evil complained of essentially? It is this: That local privileges are required through the action of a body here whose members, or the great mass of them, have no interest *pro or con* to be affected by such legislation. A man comes here and wants a city railroad charter in New York—a horse railroad, and he says, through his instruments, to some eighty or ninety members, "Your constituents do not care what is done here; it does not affect them. Here are two hundred dollars for you if you will vote for it, and it will not make a particle of difference to you;" and the consequence is that an enormous mass of bills go through here that would not go through a body—I do not care how corrupt—composed of representatives elected by the people who are to be affected by such legislation. That is a difference I do not see taken into account in some of the propositions we have made here.

Make your board of supervisors, as I hope we shall make it, constituted so that three-fourths of all the members will be required to vote for any of these corporations, or it will not pass, and the votes recorded, and I have no fear that corrupt or mischievous legislation, to any great extent, will be effected through these boards. The interest of the supervisors who, as it has been well said, are the officers most directly amenable to the people of any we have; it embraces young men who hope they will arrive—

Mr. RUMSEY—May I ask the gentleman from Westchester [Mr. Greeley] a question? Do you propose to allow the board of supervisors to charter railroad companies in the county?

Mr. GREELEY—That is in the bill here. And I answer that, if there are to be charters affecting localities, I certainly prefer to leave the power in the board of supervisors, under such regulations as we will make here, rather than leave it anywhere else. I prefer that the men on whose corns you are to tread shall elect the persons by whom those corns are to be stepped on. There is an advantage, I say, in that. In my county I would rather trust (and I will not praise our board of supervisors), I would rather trust the board of supervisors of Westchester county, under such restrictions as I propose with the power of legislating, on interests affecting that county, than any other body I know. I trust this proposition is to be so amended as to confer this power upon those boards, and then so regulated, and so restricted, that it cannot be exercised hurtfully. If we send it back to the Legislature, we shall encounter all the evils which have moved the people to send us here with the hope that they will be mitigated if not removed; and if we simply say our Legislature shall have power to do this and that we know very well it will do nothing; and the remarks just made by the eminent chairman of the judiciary committee [Mr. Folger] are that, in his judgment, they will practically do nothing; that the power had better be left to be exercised by the Legislature than have it exercised by the board of supervisors. His judgment will be controlling to a great extent upon that legislation; and I think to-day we must resolve that the board of supervisors shall substantially have this power of local legislation, or we shall dismiss all hope of any practical reform, such as the people, crying and suffering under improvident, wasteful, reckless and excessive legislation have sent us here to correct.

Mr. FOLGER—What improvident, reckless legislation does the gentleman [Mr. Greeley] have in mind, the subject-matter of which he would have intrusted to the board of supervisors?

Mr. GREELEY—All this legislation creating corporations, amending the charters of corporations, passing city railroad bills, and so on. Nine hundred, at least, out of every thousand of the bills passed last winter, I believe, either should have been passed by a local board or not at all.

Mr. RATHBUN—The proposition to amend made by the gentleman from Steuben [Mr. Rumsey] I apprehend is preferable to the amendment offered by the gentleman from Seneca [Mr. Hadley], to provide that matters hereafter shall be

submitted by the Legislature to the board of supervisors by a general law, leaving it to the discretion and judgment of the Legislature to prescribe in what cases and to what extent that power shall be intrusted to a board of supervisors. Now, sir, the argument of the gentleman from Onondaga [Mr. Corbett] in regard to the amendment offered by the gentleman from Steuben [Mr. Rumsey] is that they are not willing to intrust that discretion or the exercise of the power to the Legislature, but they propose to direct specifically what it shall be, and then leave it to the Legislature to prescribe the manner and means by which it is to be effected by the board of supervisors. Really, that amendment would not succeed in doing anything if the Legislatures are so unfit to be intrusted in regard to what shall be sent. The power shall be taken from them to exercise any discretion, but the power is to be left with them to prescribe the manner in which the power is to be exercised, which is to be given directly. Now, sir, if they are so corrupt in one sense that they will not transmit the power to the board of supervisors, can they be intrusted in the exercise of the power prescribing the mode and manner in which the board of supervisors shall perform those things directly to be transmitted to them by the Convention in the Constitution. The result would be the same. If the Legislature believes that the power intended to be conferred by the Constitution will be improperly used by the board of supervisors they could easily trammel it in such a way as to make it wholly inoperative, therefore, it is utterly impossible to escape this corrupt Legislature, because in one sense they say "we will not transmit the power," and the other, "we will obey the injunction of the Constitution but will obey it in such a way as to deprive the board of that power." That is not the way to get along with this proposition in my judgment. I know nothing about the corruption of the Legislature personally, and I have not been inside of the chamber when they have been here in twenty years. I took very little interest in the question further than public rumor circulates through the country, and a part of that rumor I am inclined to believe, and a part I know nothing about and am inclined not to believe. But one thing I do believe, that, if the Legislature has been as corrupt as has been reported heretofore, that what has been and what will be done, the power that will be taken from them in certain cases, and especially in the cases referred to by the gentleman from Ontario [Mr. Folger] will result in vast improvement. The discretionary power in regard to granting special charters for corporations will be taken out of the Constitution and from their jurisdiction altogether. I believe that a portion of the body of men who are to come here after they see the scathing administered to the Legislature of the State of New York by members of this Convention, will be, for some years at least, very cautious in giving ground for charging them with corruption. I do not believe myself it is safe to confer on the board of supervisors of the counties of the State very extensive powers of local legislation. They are a single body. They represent towns, and they are as tenacious of

town interest and town feeling as any member of the Legislature is of that of the county. They are a single body; they have no controlling conservative body; they have no veto power; they are governed like all men, by impulse. They are as liable to do hasty and inconsiderate things as anyone else. They are subject to the impulses common to all men, and they can easily be brought to exercise the power without that due consideration and caution which they would do if organized in the ordinary form and manner of a legislative body. I submit that the power to be intrusted to the boards of supervisors of the counties should be of matters of a purely local character, such as roads and bridges, the division of towns, which they now have, and many other things of that character may properly be intrusted to them. Many things are intrusted to them now, but when you come to the idea of legislation, that the boards of supervisors shall be authorized to pass laws, sixty odd legislatures in the State of New York engaged in passing laws, the thing is a perfect absurdity; you could not imagine a greater absurdity in my judgment. Sixty local legislatures in the State, each one passing laws, each a single body under the impulse and pressure of a local community in which they live, surrounded by the leading and influential men of the town and county, and then ask them to exercise sound discretion in matters of legislation, the thing is not only absurd, but it is ridiculous in my judgment. Now, while the Legislature should confer on the boards of supervisors larger powers than they now have, they should be defined, and restricted to certain specific acts, not in the character of legislation, but the simple right to exercise administrative power in regard to things affecting only the people of the county and those in regard to minor matters.

Mr. McDONALD — I am opposed to the amendment of the gentleman from Seneca [Mr. Hadley]. It gives jurisdiction to counties and boards of supervisors with regard to local matters. But it fails in this. It is simply concurrent jurisdiction, still leaving to the Legislature a like jurisdiction. The amendment now offered by the gentleman from Steuben [Mr. Rumsey] directs the Legislature to give jurisdiction to towns and counties, and if they once give it, it becomes exclusive, until the law shall be repealed or amended. At the proper time I shall offer an amendment which will give to counties exclusive jurisdiction of local matters. The difference between the two plans is this: one is concurrent, one is exclusive if and while granted, and the other is given absolutely and exclusively. Now what are the things to be remedied? Gentlemen talk about the Legislature being corrupt. The only trouble is that the Legislature are but men, are human, and all persons do not know the temptation under which legislators act, and hence they cannot certainly decide whether they themselves would not yield under like temptation. When you send a new man here to enact a law that will not affect any one within two or three hundred miles of his home in any way or manner, and a brother member, a friend of his, says to him, "Here, now, you know nothing about our locality. I know all about it. This law only affects my locality.

It does not in any way affect yours. I know all about it, and assure you, as a friend, it is just and right that this law should pass." I say, when you put a man under such influence, it is easy to see that, although honest, he trusts, as he thinks, to the better judgment of the local member, and votes for the bill without any knowledge whatever. Thus, if a local member favors any particular project, the balance of the members favor it almost as a matter of course. If the Assemblymen and Senator be in favor of any local matter it cannot possibly be beaten, provided always they are in the political majority. The other members do not inquire into it; they have no interest in it; they do not care anything about it. The trouble is, as has been well stated by the gentleman from Westchester [Mr. Greeley], that you ask a body to legislate and determine with regard to local affairs, who with the exception of two or three, have no interest in and care nothing about them. They are just as honest as anybody else, but they trust themselves to a neighbor, who knows they care nothing about the pending proposition or measure, but will act upon his suggestions. Another trouble with the Legislature, as I understand it, is what is called log-rolling. The corrupt use of money is not so frequent or so great an evil. Log-rolling is the greatest trouble—half a dozen local measures are put together and one is made to pass the other, when no one of them could or would pass on its own merits. This being the truth how shall we remedy it? We shall find our remedy by sending purely local matters to local legislatures, at the same time leaving with the Legislature power to pass general laws under which these local legislatures shall act. In that way, it seems to me, you will prevent improper enactment of these special laws. Take the case with regard to the division of the town of China, in the county of Wyoming, with which the Senate two years ago were occupied for several days. Now, this could have been done at home better and cheaper; but some how or other, the people seem to think that anything done by a Legislature—being done by a larger body—is better done. That seems to be the idea. Often when it is desired to have anything done that is against the will of the people, it is endeavored to have it done by somebody that does not know what the will of the people is. I do not say this was the fact with regard to the case referred to, but if that had been done in Wyoming county, it would have been known what was wanted and what was not wanted. The board of supervisors could have acted with the knowledge of the people, and would have had some interest in the matter; or if they did not, their neighbors would have, and they would have seen to it that the supervisors did know about it. I can get a dozen men to sign a petition for anything, when they dare not themselves personally assume the responsibility. That is the trouble. A man is willing to sign a petition, and will often sign a petition for anything; when if he was to bear the personal responsibility, he would never have done it.

Mr. COLAHAN — The gentleman says the Legislature is influenced by the member from a

particular locality in regard to measures concerning that locality. I would like to ask him if a member of the Legislature is not accountable to the locality he represents?

Mr. McDONALD—Yes; but he is much more accountable to about a dozen men who nominated him than he is to the county. He also shelters himself under the whole Legislature. He says: "The Legislature all passed it. I was only one of a hundred and sixty." But if you provide for local legislation, and leave the Legislature to define and regulate it, it seems to me, in the words of the gentleman from Westchester [Mr. Greeley], if anybody treads on the toes of the people they will have an opportunity of immediately knowing it, and pointing to where the responsibility lies. It is the only way in which you can get correct legislation. I do not suppose a board of supervisors is any more honest than a Legislature. I do not suppose they are any less honest. Will any gentleman answer this question? Why ought not the local board of supervisors to pass local laws that affect only the district under their control? Do they not know the wants of their own county? Are they not immediately responsible? Would any Legislature know more? Would it be less directly responsible? These questions bring their own answer. And in conclusion, I submit no good objection can be urged against local legislation with regard to local objects.

Mr. S. TOWNSEND—There is one difficulty that appears to embarrass our discussions of the report of this committee—that is: many of the amendments and propositions that have been offered are not before us in print, and we are unable to keep them all in our mind's eye. Yet after all, we are to consider these different amendments merely as modifications of section seven reported by the committee, which undertakes to prescribe and does prescribe with a great deal of minuteness the additional powers that are to be given to the board of supervisors. It is asserted that the board of supervisors has never exercised large powers. I am convinced that those gentlemen must forget that our boards of supervisors, as instituted four or five years ago, inaugurated and sanctioned most important legislation in a pecuniary sense. And after all, pecuniary matters, next after life and liberty, are what most concern us here. In relation to pecuniary matters, we all know the boards of supervisors of the several counties of our State during the late war were far in advance of any legislation here, and inaugurated measures that involved their counties—in my own case, at least—ten or fifteen per cent on the valuation of its assessed property. In order to be warranted in that legislation which was then illegal, but which I hope will not be so hereafter, they asked various citizens to guarantee that appropriate legislation should follow their action. There is this much on that point. The board of supervisors have in an emergency which we all remember, exercised power unlimited almost, so far as regarded their own counties. We propose to confer only powers that exclusively relate to the business of counties, and not go beyond that. Again, there is objection made that the boards of supervisors

are but one legislative body. We are all ready to admit that our legislation and laws in many respects bear a close analogy to the British government. The State of New York has reciprocated in giving that government most valuable hints in matters relating to the subject of trust estates, and in reference to the security for circulation in her banking law of 1844-'45, in close analogy with our legislation of '38 to '42 whilst perfecting in effect our own law, now that of the United States. The great features of our common law, are derived from theirs. We have our statutory system to a greater degree than they have, of course. The British Parliament consists of two bodies, theoretically, but practically of only one. We see this illustrated in the discussions in that body. A bill is started in the House of Commons, goes to the House of Lords, and comes back to the House of Commons. What do the House of Commons do? Hardly pay any attention to the suggestions that may be made in the other House. It is in the Commons that the legislation is inaugurated. In France, and I believe in Prussia, and in many European countries, we know the legislation of one body with a revisory veto power is common. Then again, in the great case of the reform bill forty years ago. What was it but the legislation of one body? The House of Peers resisted to the death almost. We remember the speech of the Duke of York, and how it was overcome by the significant threat of an enlargement of the peers. Then again, there is a great deal said here about one body passing laws—of these minor bodies passing laws. I will state to gentlemen that in the corporation of the city of New York there were at one time declared to be twelve thousand ordinances extant. What are ordinances but laws, more or less modified? It is understood that although we delegate these powers to the boards of supervisors we should yet reserve proper supremacy for the Legislature, which I hope hereafter will be a different body from what we have recently had.

Mr. ALVORD—It seems to me that the amendment can be construed in a double sense. That is, as it reads it gives the Legislature the power not only to repeal general laws but also to repeal any of the special laws which, under powers granted to the board of supervisors, they have passed. I, therefore, suggest to the gentleman that he insert before the word "laws" the word "general," as I understand him to take away from the Legislature the right to repeal the general laws of the board of supervisors.

Mr. RUMSEY—I am inclined to accept that amendment.

Mr. A. LAWRENCE—As one of the Committee on Town and County Officers, I concurred in all the recommendations of that committee; though to what exact extent we may safely go in conferring legislative powers on boards of supervisors, I am not prepared to say in the presence of the large number of learned professional gentlemen, who are members of this body. But whatever legislative powers are conferred upon boards of supervisors, it seems to me important, should be exclusive, and that if the State Legislature retains concurrent jurisdiction, it would defeat a

very important object sought to be attained by granting such powers. While measures whose real merits would recommend them, would be brought before the board of supervisors every scheme of doubtful honesty, every local project which could not secure a majority of the board would, as it now is, be brought before the Legislature. I represent a county which furnishes, perhaps, as striking an illustration of the effects of local legislation at Albany as any county in the State. It is but little more than thirteen years since we were organized. Our county seat was originally fixed by a commission appointed by the Legislature. From the location so selected it was, after buildings were partly erected, removed by the board of supervisors, by a two-thirds vote, passed for two consecutive years. From this location it was, in less than two years, removed by the Legislature by a law confirming the location originally made by their commissioners. It was again removed by the supervisors by a two-thirds vote, passed for two consecutive years. And about two years after the Legislature again confirmed their original location, and made it, as it was supposed, permanent by the division of a town, so as to prevent any subsequent removal by a two-thirds vote. Under this state of affairs we rested in peace for six years, and at the last general election nothing was heard in any quarter of any present design to disturb this arrangement; but before the close of the session of the last Legislature a law was passed conditionally removing our county seat. This law was passed in accordance with a resolution hastily passed by a board of supervisors, the action of at least one of whose members was, even before the final passage of the law, repudiated by the town which he represented, and also, as it was claimed upon the petition of a majority of the voters of the county, and among them of the voters of my own town, which has always, and does now sustain with great unanimity the location which it was proposed to abandon. Whether upon a full and fair statement of all the questions involved, a majority of the voters would have petitioned for such a law as was passed, I am unable to say, but the law as passed does not, in many respects, fulfill the representations, under which, in many cases, signatures were obtained to the petitions for removal. Under the evil effects of this concurrent jurisdiction, we have built two sets of county buildings at the public expense, and have expended from private sources large amounts to promote or defeat legislation at Albany, and it is even now a matter of dispute in the county where our county seat is legally located. Were it an entirely new proposition to confer legislative powers on boards of supervisors the case would be somewhat different from what it now is, but for nearly eighteen years they have, concurrent with the Legislature, exercised very considerable legislative powers, and with such general satisfaction as to create the belief that it would be wise to trust them with more. If there is one purpose for which, more than any other, the people of the State united in calling this Convention, if we except the desired reform of the judiciary, that purpose was to provide constitutional means for purifying legislation,

by taking from the Legislature, so far as it can be done, the power of special and local legislation as to such matters as have heretofore given rise to the suspicion of venality and corruption among some of the members of that body. And the same sentiment which has called for this change has pointed to the boards of supervisors as the proper depositories of this power. So far as the country portions of the State are concerned, this sentiment seems to me to be based on sound common sense. The supervisor, more than many other officers, is selected with reference to his peculiar qualifications for the duties of that office. His official acts are performed under the eyes of his constituents, and he can rarely shield himself from blame, as may generally be done by members of the Legislature, by throwing the blame on others. The result of this immediate responsibility has been that, as a body, the boards of supervisors throughout the State have retained the public confidence and created a desire that further powers should be conferred upon them, while there has been a marked decrease in the confidence felt in the Legislature and a corresponding desire to diminish, as far as possible, their powers for evil. The division, also, among nearly sixty different bodies of the great bulk of that special and local legislation which, concentrated in one place, serves to engender corruption, will of itself, to a great extent, destroy the temptation to venality which is now so powerful. I had intended to have made some remarks in relation to other matters connected with this question, but, under the rule limiting debate to ten minutes, I will be unable to say all I desire to say, and for that reason will not further occupy the time of the committee.

Mr. GREELEY—I wish the committee to understand that this proposition of the gentleman from Steuben [Mr. Rumsey] abolishes the whole matter. It wipes out, in my judgment, every prospect of reform. If you pass that, consider that you remit it all back to the Legislature and give them power to give us a little as an experiment, and take it back the next year; so in effect we shall have nothing done, and no hope of anything, if this amendment passes. I shall stand by the committee, whose proposition seems to me much the best to pass, though not perhaps the greatest improvement, of anything we have. But as between this amendment and that with which it is proposed to supersede it, I prefer this, which at least gives us some hope of a reform, by localizing this action, which I will not call legislation, but which is a mode of administering local interests. It would give us hope of some improvement. But if we adopt the amendment of the gentleman from Steuben [Mr. Rumsey], we may say "farewell" to any hope of reform in the Legislature or reform anywhere.

Mr. EVARTS—I take it, the question before the Convention presents itself thus: Is it expedient to frame in the Constitution a system of legislative powers for the boards of supervisors? Or is it better, while recognizing the fact that many matters of administration might properly be accorded to those local boards, leave entirely the absolute legislative authority, imparted by this Constitution, in the Legislature of the State.

I look with great alarm upon the suggestion that by constitutional, and, so unchangeable provisions, the unity of legislative power shall be dispersed through the counties of this State. The Constitution framed in 1846 went to the extreme, as it seems to me, of decentralization that is possible with the existence of a government at all. But the unity of the Legislature was left untouched. And now this Convention was called under a movement of the popular mind, which has perceived the evils of this dispersion of the power of the government, of this division of power and responsibility, to correct those evils. But we are met here by a constitutional arrangement that is to permit independent and diverse local legislation in all the counties of this State. Who is sagacious enough to foresee, who is wise enough to point out, here and now, for the guidance of the courts or the instruction of the community, what are the limits of legislation sought to be attributed to these local boards? I can see nothing before the people of this State but a new plunge into the sea of litigation in which they have been so constantly involved during the last twenty years. I know nothing that can throw all the interests and fortunes of the people into the hands of the courts and of the lawyers more completely than this simple, and, as I must think, careless suggestion that local legislation shall be taken from the central legislative power and given to local bodies. Now, is there any answer to the proposition that, leaving unchanged and entire legislative authority, the Legislature itself, from time to time, should apportion out to local administration such topics as may be better managed in the localities, and from which the Legislature may be wisely saved? No answer but this: that the Legislature cannot be trusted. That while you frame a Constitution that satisfies you as to the source of legislative authority in the suffrage, yet the Legislature produced by that suffrage cannot be trusted with what belongs to legislative power. Your remedy for the evils under which the community suffers is to strip the Legislature of power. Why, we can easily get rid of the evils and dangers of government if you can get rid of the duties and labors of government. But to what end is it, to constitute a formal legislative body which is satisfactory in its origin and organization to you, and then condemn it as unworthy of legislative trust, by dispersing to the control of local boards these uncomputed, undefined interests which are described as local. You will have, so to speak, border wars between the counties, if you leave this local legislation, uncontrolled by the central Legislature, to the rivalry and competitions of county boards. If your Constitution strips the Legislature of this controlling power, be assured that the people will understand, if we do not, this irreclaimable dispersion of legislative authority throughout the counties of the State, and will condemn this Constitution as theoretical and visionary.

Mr. OPDYKE—I cannot share in any degree the alarm felt by my colleague of the city of New York [Mr. Evarts], in permitting the people of the different counties of this State to take charge of their own local interests. It seems to me that

this is the proper and safe depository for that authority. But, sir, I am alarmed by the action of the central legislative power in regard to these local interests. We have all seen the evil of it—the evil of permitting one class of men to legislate for others in regard to matters in which they have no personal interest. It has been regarded by those who have made the science of government a study that the greatest perfection of our system of government is the fact that we leave local matters to be governed by local authorities. New England, which I think we must all admit is not behind the foremost in the art of government in this country, leaves such matters exclusively to their local authorities. The people of this State have made their will known as palpably as it is possible to make it known, that they desire that this transfer of power should be made. I feel that this Convention will fail in one of its highest duties if it fails to conform with that wish.

Mr. E. BROOKS—I wish to put a single question to the gentleman from New York [Mr. Evarts]. The question is, what has been the experience of the city of New York for the last twenty years in reference to our State legislation? What is the experience of every gentleman acquainted at all with the several localities of the State, and what has been done in Albany in regard to these localities? Have they not, year after year, gone from bad to worse. If there has been evil legislation on the part of the boards of supervisors, has not such legislation been pre-eminently the rule here? Sir, that is the solution of the whole question in my mind. I appeal to the experience of every gentleman on this floor, who has observed the legislation of the State, as to what has been its effect upon the morals of the people and upon the corporations of the State.

Mr. FOLGER—Does the gentleman from Richmond [Mr. E. Brooks] state any law which he has in his mind which has a mischievous tendency, which could have been passed by a board of supervisors?

Mr. E. BROOKS—Yes, I can name a great many; and I will speak as a member of the Committee on Cities and Village when in the State Senate. Sir, if we could have worked twenty hours a day in the mere reading of bills which were laid before that committee—some of them covering seventy pages of folio matter, sometimes in manuscript and sometimes in print—it would have been physically impossible for that committee even to have read them. Those village corporations were very often proper subjects for the board of supervisors, and would have been regulated much better than the Legislature could have done.

Mr. FOLGER—Where was the mischief?

Mr. E. BROOKS—I will tell the gentleman where the mischief was. Here is a petition from a number of gentlemen representing some locality asking the member representing that locality to pass a bill establishing a corporation—a city, if you please, in some county. Next year comes from these very same persons a petition to amend the previous act. The first experiment has failed, and they ask that the law be amended. The third year will come a request from the very same locality, and the very same people, asking that the village charter be amended again. Your

statute books are filled with just such enactments as these, whereas, as it has been said very properly, if such matters were left to localities they would understand what the people of these immediate localities want. Sir, another experience. The gentleman from New York [Mr. Evarts] will understand it, and the gentleman from Ontario [Mr. Folger] will understand it. The board of supervisors of the city of New York make up their tax lists. It covers several millions of dollars, or ten or twelve millions is divided between the board of aldermen and councilmen and the board of supervisors. They ask appropriations for various objects named in the tax levy. But at once comes from the city of New York twenty different parties, asking that the tax levy be amended. The Legislature will add probably ten or twelve hundred thousand dollars to the amount passed after the board of supervisors and board of aldermen have finished their work. The gentleman from Ontario [Mr. Folger] spoke about the evils of single bodies of legislation. Why, with a single exception and that the city of New York, all the cities in this great Commonwealth are governed by boards of aldermen alone—that is, by single bodies in all large cities save one. This one body control and regulate the entire legislation of the locality. So there is no evil in that experience, but upon the whole it has been found to be better in its results than general legislation by the State for all local purposes.

Mr. EDDY—The gentleman from Ontario [Mr. Folger] has called for instances. I beg leave to recite one instance where the parties have failed to obtain justice through the Legislature, which is a proper question to come up before and be settled by the board of supervisors. Not an hour's carriage-ride from the county-seat of the county in which I reside is a small village located at the base of a mountain. That little town is extremely annoyed by a stream that comes from the mountain, and after a heavy rain or on the sudden melting of the snows, the water comes down in torrents, entirely beyond the means of their control. At such times many of the houses are filled with water, and the cellars and streets filled with gravel. They have repeatedly petitioned the Legislature to have the course of that stream changed along the base of the mountain, as it could be done very easily. But a large land holder, owning the land below the town has persistently opposed the change. The parties have appealed to the Legislature from year to year, but that single wealthy citizen has always defeated all attempts to secure the relief those citizens are so justly entitled to. Any three disinterested men, if they go and examine the premises, will not fail to say that the prayer of those petitioners should be granted. That is a case in point that should be left directly to the board of supervisors. In that case that little town would obtain redress. I think the question before the committee is a very important matter. That class of legislation—purely local—should be left solely with the boards of supervisors of the different counties.

Mr. GRANT—I am opposed to the lodgment of legislative power in boards of supervisors; first, because I believe it to be wrong in principle;

second because I believe no good has yet, or will hereafter result from an exercise of the legislative power by boards of supervisors. The theory of our government is the theory upon which every republican government should be based, that the legislative power of that government shall be composed of three branches, namely, first, the Assembly, coming directly from the people, representing more immediately the interests and wants of the constituency; second, the Senate, more remote from the people, composed of men of experience, whose terms of office we have just prescribed to be four years; and third, the executive, to criticise and review—clothed with the veto power. Now, we have clung with tenacity to our Assembly, coming immediately from the people. We have clung with tenacity to our Senate, with a term of four years, combining experience and wisdom. We also cling with tenacity to the veto power of the Governor, creating a check to hasty legislation. Now, why depart from this principle, and establish in this State sixty miniature legislatures, each holding a distinct power of legislation, without being more immediately responsible to their constituency than the Assembly, without the wisdom and experience of the Senate, without the check of the veto power from the Governor? Sir, I think we should not. If we go back to the proceedings of the Convention of 1846, we will find that this provision authorizing the Legislature to vest certain powers of legislation in the boards of supervisors became a part of our Constitution without such consideration as was due to so great an innovation upon a system combining wisdom, security and stability. And, sir, we will further find that the first acts of the Legislature investing these powers in the boards of supervisors were accompanied by a legislative act repealing the game laws, and providing that the board of supervisors in each county might enact such laws as were necessary to regulate the taking and preservation of fish and game. What was the consequence? I reside near the borders of Sullivan, Ulster, and Delaware counties. In those three counties were three different sets of game laws, and in a little valley crossed by lines of three counties, and that which was crime on one side of these lines was an absolute right on the other side. Fish could be caught at all seasons of the year up to an unseen line, but could not be caught beyond that line without liability to punishment by law for misdemeanor. Here is what was termed by my friend from New York "a border war." Three sets of laws conflicting with each other, and all in discord with the statute of the State, all to be enforced in a single small valley, and perhaps on a single farm! This proposed distribution of legislation is in violation of our long-cherished theory of government, and has not been a success in practice. Again, I object to this distribution upon the ground that there will be great difficulty and embarrassment in the administration of the laws emanating from these divers sources, no one being in any manner bound by the action of any other. Gentlemen upon this floor ask us to allow boards of supervisors to pass laws regulating roads. Sir, if you please, the county of Albany passes a law that a private road shall be

laid out and opened by complying with certain requirements. The county of Greene, on its immediate borders, provides that a private road shall not be laid out upon any such conditions. A man living near the border desires a private road passing along the county line—the conditions that will entitle him to that road on one side of this county line will prevent it on the other. A public road is desired passing down some valley and over a county line. The laws of one county provide that certain acts and requirements must precede the laying out of that road on one side of this line, and on the other the same conditions will deny it. In a short time we have sixty legislative assemblies, each enacting laws of its own, for the elevation of its own constituency, regardless of the interests of its adjacent equal. The people of the counties know not what the law is, nor whether State or county is supreme. The courts know not what the law is, nor whether State or county must prevail. Sixty miniature governments rise up in opposition to each other, and the result is that we have nothing but confusion, internal discord, certainly destructive to our common prosperity. And all this, sir, in my opinion, is the inevitable result of this broadcast distribution of our legislative powers among so great a number of legislative bodies diverse in interests, with no central power, unaccompanied by the wisdom and experience of a Senate or the safeguards of the Executive veto.

Mr. KERNAN—I concur generally in what was said by the gentleman from New York [Mr. Evarts] against creating what could in any just sense be called fifty or sixty legislatures of the State. Nevertheless, I am opposed both to the amendment of the gentleman from Seneca [Mr. Hadley] and the amendment of the gentleman from Steuben [Mr. Rumsey]. I believe we will be able to do something in framing a Constitution which will relieve the Legislature of the State from a great deal of local legislation and yet not do what will be open to the objection of creating divers legislatures for the State. Hence it has seemed to me that the committee should reject both of these pending amendments and not leave the State in this regard substantially as under the present Constitution. After rejecting these amendments we can take the seventh section of the report of the committee and build upon that a system of remitting to the boards of supervisors, under general laws, the management, control and administration of local matters. You may, in a very strict sense, say you will thus give them legislative power; but it really would be nothing more than confiding to local authorities the power of regulating local affairs under general laws, instead of having all those local matters brought before the Legislature to be regulated and controlled by special acts. Now, sir, I believe we can improve in many respects the administration of State affairs by conferring upon the boards of supervisors of counties more power than has ever been conferred upon them by the Legislature under the provision of the existing Constitution. I think they are the proper bodies to regulate, control and administer county matters. While I object to some portions

of the seventh section, yet I think, with this as a basis, the Convention will be able to give them, by the Constitution, some power over local matters without creating the difficulties that have been suggested. We may perfect it so as to avoid the dangers which are feared by some gentlemen, and give them that power which is essential to their controlling local matters; and which will relieve the State and the Legislature from the evils incident to the large amount of special legislation which is annually had. Local affairs will be better controlled, managed and administered by local officers elected by the people of the counties, than through special legislation or by officers appointed at Albany. This is the correct theory of our government. I shall vote against the pending amendments in the hope and belief that we can perfect the seventh section reported by the committee, so as to safely give to boards of supervisors a larger power than they have hitherto possessed over local matters.

MR. HAND—I believe it is expected by our constituents that we do something of this kind; that we at least do something to correct this great evil complained of—corrupt legislation. Now, there are a great many fanciful theories brought forward here. The gentleman from Delaware [Mr. Grant] talks about the proper frame-work of government. That is all very well in theory. It is all good talk; it will all read well when we look at it. But there is such a thing as common sense, however much we may ignore it; and the people understand that, if you bring it home to them. Now, there are interests in my locality, in every locality, that no man from the east end of Long Island who comes to Albany can be made to know anything about. He cannot know anything about it by petition. I can get dozens of signatures to petitions that not five men will read, but they will sign the paper I present, just from my statement of the contents thereof. The only method members of the Legislature have of knowing anything about my local interests is by representations made to them. It is an easy matter to bias the opinion of a member from my county so he may misrepresent me; this may be done at home or in Albany, or he may live in a locality where his local interests differ from mine. It may be impossible for me to get justice in my locality. But a board of supervisors, restricted by certain local regulations, it is impossible to humbug or deceive. They understand our interests thoroughly. No man can deceive them; no man can corrupt them. If they judge wrongly at one season, they can correct their error the next. It has been asked if any evil has ever grown out of legislation on local subjects. The gentleman from Schuyler [Mr. A. Lawrence] mentioned a case in which very great evil, great wrong, and great injustice has been perpetrated upon that county. They have been put to the expense of erecting two sets of county buildings because the Legislature chose to act concurrently with the board of supervisors. I believe the supervisors located their county buildings and seat of government; but the Legislature, under what influence I know not, changed the location, thus overriding the local authorities.

MR. FOLGER—It was a change in the board of supervisors which brought about that change.

MR. HAND—As I understand it, the board of supervisors settled the matter, and afterward the Legislature interfered with the action of the board of supervisors. I know of an instance in our own county, where a certain gentleman, unknown to the great mass of the people, went to the Legislature and got an act passed—unjust in its character—which resulted in putting a very heavy tax on the county.

MR. A. LAWRENCE—Will the gentleman allow me to state the facts in this regard? The county of Schuyler was organized by an act of the Legislature passed in 1854. The location of the site for the county buildings was fixed by commissioners appointed by the Legislature, and building commissioners were also named in the law. The board of supervisors, by a two-thirds vote, passed for two consecutive years, removed the county seat after the county buildings were nearly completed. In about two years the Legislature again removed the county seat to the location fixed by their commissioners. The supervisors, by a two-thirds vote, passed for two consecutive years, again removed the site, and the Legislature again, after about two years, confirmed the original location, and fixed it permanently, as was supposed, by the division of a town, which would thereafter prevent a two-thirds vote in favor of removal, after which we remained at peace for about six years, but last winter the Legislature passed a law again conditionally removing the county seat. This was done in accordance with a resolution of the board of supervisors, hastily passed, and the action of at least one of the members was repudiated by his town I think before the final passage of the law, and it was claimed also to have been done upon the petition of a majority of the voters of the county, including a majority of the voters of my own town, which has always, with great unanimity supported the location which it was proposed to abandon; and it is very generally conceded that the signatures from that town, and probably from others, were obtained by representations which were not realized by the provisions of the law.

MR. HAND—I would ask, after this statement, whether anything can be done to remedy this abuse of power by the Legislature.

MR. FOLGER—I would ask whether anything can be done to remedy the action of the board of supervisors.

MR. HAND—If we wanted to change the name of a town in my place, we must send a committee here to have it changed. If we want to change the name of a town from Port Crane to Fenton—after our respected Governor—I think we should have the privilege of doing it. But we have not the power. I do not know what enormities they might perpetrate if a clique in a remote part of the county chose to act wrongly. Let the board of supervisors attend to those things that are purely local. I ask, what evil is to come from legitimate local legislation? I am in favor of the report of the committee on this subject, with the restrictions mentioned by the gentleman from Westchester [Mr. Greeley], that three-fourths of the members of that body shall record their votes for a measure before it shall become a law.

Mr. DALY—There is such a distinction as local and general laws. If the board of supervisors of a county should pass such a law as suggested by the gentleman on the other side of the chamber [Mr. Grant], so extensive in its territorial character as to conflict with the rights of other counties, it would be exceeding their powers, as it would not be local, but in its nature a general law. But there are local matters peculiar to the county, in respect to which the inhabitants of the county are much better able to judge than anybody in the center of the State can be. All such matters, in my judgment, would be more wisely acted upon within the limits of the county, the constituents of which would have an ample opportunity for representation or remonstrance, than would be the case where the passage of such laws is at the capital of the State, where a large portion of that constituency are unable to attend. I do not know Mr. Chairman, how it may be in the other counties of the State; this law may not be as beneficial in the county as it would be in the portion of the State which I represent. In respect to that portion—the city of New York—I have simply to say this, without any further consideration of the subject, that I am old enough to remember the state of things which existed when the city of New York was administered under the local provision of the two ancient charters, under which it is incorporated, and that though there were evils undoubtedly under that system, as there must be under any system of legislation; I beg leave to state, as the result of my experience, that the affairs of the city were more economically, wisely and honestly administered than has been the case since legislation upon municipal matters has been to a large degree transferred from the local limits of the city to the center of the State. The general effect of central legislation, so far as that city is concerned, has been, in my judgment, to its prejudice. The gentleman from Ontario [Mr. Folger] asks for an illustration. The limited time afforded to a speaker here would not enable me to go into a statement of cases. I will mention one, because it is the most recent and because the city of New York is indebted to the honest efforts of that gentleman for preventing the passage through the Senate of a bill which had passed the Assembly, extending a railroad four miles through the city of New York—which was demanded by no public necessity—taking its course through the great heart of the city in a straight line, through that portion of the city where the most expensive dwellings are situated, embracing an enormous amount of property and involving a prodigious sacrifice of rights and interests, and which was prevented only by the people of New York coming up to this chamber and finding men as honest as my friend from Ontario [Mr. Folger], who stood by them and prevented the consummation of this scheme. This is an illustration of the danger of special legislative acts for local purposes. Such an act could never have been passed in the city of New York, but it passed the Assembly by a vote almost unanimous. Mr. Chairman, I am in favor of this provision. I am in favor of either the first part of the provision reported by the committee, or that of the committee whose report

is now proposed as a substitute. If my time will permit, I will simply read that part of the first section of the first report, as embracing my view of what it is proper to do:

"The board of supervisors of each county, a majority of whom shall constitute a quorum, shall, under such general regulations as may be prescribed by law, have exclusive legislative and administrative power over, and superintendence and control of such local and internal affairs and fiscal concerns within their county, as are not otherwise provided by this Constitution."

The distinction is this: I understand the amendment of the gentleman on the other side of the chamber [Mr. Rumsey] to be simply that the Legislature may. I am in favor of making it imperative—that they must; for the simple reason that it is idle to enact laws giving them discretion to do it or not. If the thing is right, it should be done.

Mr. HUTCHINS—I am not alarmed at the proposition which is made to give the boards of supervisors certain administrative powers; but as to the provision conferring upon them a legislative power, to legislate for a locality irrespective of the other localities of the State if it is adopted, I think every member who votes for it, if he lives ten years, will regret the vote. Why, sir, let us go back a little in the history of the city of New York, and imagine what the result would have been if exclusive local legislative powers had been conferred upon the board of supervisors in said city; numbering, as some of our friends say, a quarter of the population of the State, paying one-third of its taxes! If the powers are conferred the time will soon come when the question will have to be settled, as it was in olden time, whether Rome should rule the empire or the empire should rule Rome. If the members who reside in the rural districts in this State choose to confer that power upon the people of the city of New York, by a constitutional sanction, unrestricted and unlimited, let them try the experiment, I do not think it wise to do so. The result will show whether I am right or not. Now, what is a local law? As the gentleman from Ontario [Mr. Folger] has already stated, a law may be local in its terms, and in its title, but still a law affecting every citizen in this State. Why, sir, you authorize the corporation of the city of New York as a legislature, if you please, to impose such a tax as they choose in the way of duties for wharfage in that port. The wharves, it is true, are located in the city of New York; but, sir, when that tax is levied (should it be) for the purpose of raising a revenue, at the expense of the rural districts, to support the local government of the city—a tax it may be upon your tea, coffee and sugar and every commodity that goes into the rural districts—has not the State, which is the sovereign power, something to say about that, and ought it to give up this power? Has it nothing to say in regard to the way in which the police power shall be administered? Has it nothing to say in relation to your health laws? Your health officer is in one sense a local officer. Suppose that, in the discharge of his duty in the city of New York, he opens the gates and lets in a case of cholera. You have it, then, in the city

of New York; but, unfortunately, there are no means of confining it to that city, and it spreads to the rural districts. Have they nothing to say about that? Is that a local matter which should be left to local authority? Again, the corporation of the city of New York, acting as a local legislature, passed a bill authorizing a Broadway railroad, and nearly every member of the common council had his interest in that bill. They passed it notwithstanding the injunction order of a court, which had been issued and served upon them; and so shameless were they, and so disregarding of all law and order, not to say the respect which is due to the judiciary, that, with that injunction served upon them, that local legislature, in the dead hour of midnight, passed an ordinance for a Broadway railroad. No one condemned that act more than my friend from Richmond [Mr. E. Brooks]. Look at the files of his paper and see how he denounced that shameful act. Every press in the land cried out shame. What was the result? The citizens of New York, without respect of party, applied to the Legislature, invoking relief at its hands, that it should assume entire control over this matter. They did so, and you have not had any Broadway railroad. If any act has been passed by the Legislature, it has been vetoed by the Governor. And so I might go on and enumerate other instances in the city of New York. Why, it is said that they come from the city of New York to get items put into the tax levy, which you could not get inserted providing it was passed by your board of supervisors. Well, I do not know how that may be. We have a courthouse down there in the city of New York that the board of supervisors have been building for some ten years past. They have come here every year, I believe, since that time, asking for an appropriation, each year promising to complete it upon the appropriation given them; but still they come here each year and ask for more. The people have been very quiet and submissive all this time. The authorities in New York, it is true, have not asked for every item which has been inserted in the tax levy at Albany. It is a mere matter of form and ceremony whether they are inserted by the authorities in New York or not, the inserting them there having no binding force or effect. They are compelled to come to Albany to obtain legislative sanction for the tax levy, and therefore there are many good and valid claims that are not inserted in the tax levy until it comes here. And now in relation to this railroad bill that my friend from New York [Mr. Daly] spoke of, which passed last winter. What were the facts? It passed one house—the Assembly—and I believe every press in the city of New York was in favor of it up to that point. My friend on my right [Mr. Greeley] advocated it at that time, and defended it after it had been rejected by the Legislature. It was a proposition to go through a certain locality, and pay for all the land taken for it.

Mr. FOLGER—How did they propose to pay for the land? It was in the stock of the company.

Mr. HUTCHINS—The bill could have been amended in the Senate in that respect. But the principle is the thing. I do not know that one locality in New York is more sacred than another. It may be very hard and unwise that a railroad

should be allowed to be built through leading avenues; but if the necessities of travel, and the wants of commerce require it, and the interests of the people demand it, no one locality is more sacred than another, being restricted by proper safeguards to protect the owner of property on the street. It may be very hard that a railroad should be allowed to be built through my land, that I have ornamented and spent a great deal of money upon, to make it attractive; but if the necessities of trade demand it, it must go. Those who take it, however, must pay a fair and just price for it. The bill in question passed the House almost unanimously—with but one dissenting vote. One gentleman from Erie voted against it; the people were at first all in favor of it. It was a thing that attracted a great deal of attention. When it came into the Senate, upon investigation of its merits, the committee to whom it was referred reported against it. If I recollect aright, it never got before the Senate for action; and the bill was defeated.

Mr. FOLGER—The committee reported adversely, and there was a motion to disagree.

Mr. HUTCHINS—I said that the committee reported against it. And yet this bill would, in my judgment, have been passed by the local authorities in the city of New York far easier than it could have been passed in Albany. The experience that we have had in legislative matters in that city would not lead us to suppose that it would be a very difficult thing to push a bill of that kind through the common council or the board of supervisors.

Mr. RUMSEY—I have been requested to alter an amendment offered by me by inserting at the commencement the word "shall," instead of "may." I have no objection, and I propose to alter it in that way.

There being no objection, the amendment was so modified.

Mr. GERRY—I have listened with a good deal of interest to the remarks of the gentleman [Mr. Hutchins] who assumes to represent here the interests of the city of New York. I have the honor of being a local delegate from that city; he has the honor of being a delegate of the State at large, without ever having been elected to any office in the city of New York at all. I desire to call attention to one or two errors into which the gentleman has fallen. I do not think they were intentional, but I consider that they resulted from his want of information in regard to those particular matters, for I am loth to believe that he intentionally ignores facts which are vital to the interests of the city of New York. Now, sir, one of the difficulties which has arisen from vesting in the Legislature of the State of New York the exclusive right to give, grant and confer away all the franchises within its corporate limits is that the city of New York has been thus deprived of the right of reaping, from the proceeds of those franchises, that legitimate revenue, which would reduce the taxes which she pays at the present time at least one-half. If the power was given to the supervisors of the city and county of New York, or to the local authorities within the city, either to license railroads within its limits or to grant the rights

of wharfage, as they thought fit and proper, they would have power to and undoubtedly would exact certain taxes as a condition precedent to granting such license or rights which would inure to the pecuniary benefit of the city and of its tax payers. And it seems to me that they would be in a position, because of their continuous sessions, to regulate promptly and effectually any evil which might arise from the improper exercise of the privileges granted under these licenses. But under the present condition of legislation in the State, where it is optional with any man who has money enough to corrupt a sufficient number of the legislators of the State to procure the passage in his favor of any local bill giving him exclusively franchises worth millions of dollars, the city of New York is robbed of those franchises, and the profits inure to the private emolument of the corruptionist himself. It never was and never used to be a principle, before the passage of the Constitution of 1846, that it was necessary for the city of New York to go to the Legislature of the State in order to secure a proper collection and payment of the city tax levy. We were accustomed to regulate our own matters, without the suggestions and without the interference of the Legislature. The supervisors of the county of New York themselves had the power to direct the collection of the city and county taxes, and it was only after they abused the power, and by reckless expenditure plunged the city and county of New York into such a condition that it was deemed necessary to incorporate the amount of the city tax-levy into the general bill authorizing the collection of that part of the city taxes which were due from it to the State as its quota of State tax. So, all these railroad franchises which have been granted in this manner by successive Legislatures to private individuals have taken just so many dollars out of the pockets of the tax-paying citizens of New York, who have been compelled to make up for the leak resulting from the improper granting of these franchises by paying money out of their own pockets to make up the deficit in the amount of the taxes. It is said that because these local boards in the city of New York have the care of interests affecting to a certain degree the health or the security of the inhabitants of the State, they should therefore be under the regulation and the exclusive control of the Legislature of the State, who are more peculiarly the representatives of the people at large. But it does not occur to the gentleman [Mr. Hutchins] that the people who have those interests under their eye the entire time, who are in constant attendance there and on the continual lookout for all sorts of abuses within their immediate locality, and which more immediately affect their health and safety, are governed by the principles of self interest, and would regulate the matter far better than any board of health appointed by men from other parts of the State, who know nothing about their local affairs except from the misrepresentations of those who are personally interested in having certain measures adopted for their own private ends. If it were left to the city of New York to regulate her own local affairs, she would be found fully competent for the task in every sense. She has up-

right, a whole men among her citizens, whom she is proud to own as such, and who in personal integrity and ability are second to none in the State. This interference by the Legislature for years past has swelled the taxes of the city of New York until they have reached a sum almost unparalleled in any community that ever existed. I have not the time now to give the statistics, but her taxes last year were over eighteen millions of dollars, and I point to the startling fact that she pays at least one-third, and nearly one-half, of the taxes of the State of New York. And yet it is said that the Legislature are still more competent than the local boards and authorities of the city of New York to administer the franchises within the corporate limits of the city, because they are further removed from them, breathe in a purer atmosphere, and can judge better one hundred and fifty miles from the city than those who live in it what is there needed. Why let us see whether the people at large are really benefited by the exercise of this power by the Legislature to the exclusion of the city authorities. A charter is granted at Albany to certain persons creating thereby a railroad corporation in the city of New York. That corporation is answerable only to the Legislature for the exercise of its powers and any abuse of the terms of its charter can only be corrected by the Legislature or by a long, intricate legal process instituted by the Attorney-General in the nature of a *quo warranto* which is seldom put in force.

Mr. HITCHMAN—I would call the attention of my colleague [Mr. Gerry] to the fact that the railroad companies there even change the grades of the streets without authority, and which could not be done except with the consent of three-fourths of the property owners in the line of the street.

Mr. GERRY—That is true. They not only do that, but the city authorities cannot compel the railroad companies to run enough cars to accommodate the traveling public, if it does not see fit to do so; nor can it prevent that public from being packed like sardines in over-crowded cars for want of a sufficient number of cars which the parsimony of the corporation forbids it to run for fear thereby of decreasing the amount of the enormous dividends which it pays annually to the lucky owners of its capital stock. The Legislature meets only once a year, and hence no abuses can be corrected but once a year, and they never are corrected at all, because the Legislature knows nothing about them, and the city has no power to correct them, and the people suffer.

Mr. HUTCHINS—I do not suppose that the fact that this is the first time that the gentleman [Mr. Gerry] ever ran for the office he now holds is new to this Convention, nor can I perceive what it has to do with the subject under consideration. That I assume to speak for the city of New York, without having due regard for the interests of her people, is not true. When I speak I endeavor to speak for the city of New York; but I do not forget that I am also an inhabitant of the State of New York, and that there are other interests which are to be taken care of, when we are making the fundamental law, together with the interests of the city of New York. Now, in relation to the railroads which the gentleman speaks of, it is in the

power of the common council to fix the license fee. They are to be run subject to their regulations. The only thing the Legislature has done has been to grant a privilege, a power vested in the sovereign people, which the courts decided could be granted by no one else except the people, represented through the Legislature, and they were made subject to such limitations as placed the matter entirely in the control of the local legislature. In relation to these railroads, the gentleman knows full well that the first franchises for railroads granted in the city of New York were granted by the common council, and that these restrictions were afterward imposed upon them. The law was passed in 1854, after the courts had decided that these grants were illegal and void, confirming all these grants. So much for that. What will an untrammelled local legislature do? Look at the city of Brooklyn, where their local legislature is granting these franchises in almost every street, against the remonstrances of property owners, and every gentleman from Kings county knows it. And they are not satisfied with granting those powers to one corporation, but they grant them to three or four different corporations in the same street, getting them into inextricable confusion, and making litigation unbounded. I do not think any gentleman from Kings county wants any such power as this put into the hands of these local bodies, when we have representatives from every section of the State, who can look to such interests disinterestedly—only interested as the citizens of this great State. It is when we have that jury, so to speak, a jury of impartial men, to pass upon what is asked for, that we can feel safe.

Mr. E. BROOKS—Will the gentleman allow me to say a word?

Mr. HUTCHINS—The gentleman can answer me after I get through. I am not opposing the granting of certain administrative powers to the board of supervisors, and in the section reported by the committee through its chairman—section seven—I think is about as near right as you can get it; and I think if we should take that section and perfect it, and confer upon the boards of supervisors certain powers, we should do an act of wisdom. It is not against that I am speaking. We have now sixty legislative bodies. We have boards of supervisors, that perform certain legislative acts. This is the point that I take, that if you should give this unlimited, untrammelled control, you do not know where it is going to lead to. I would ask that the Legislature shall keep the reins in their own hands. Whatever you do in your Constitution, be sure you do it right. Grant just such powers as you think you can safely confer, but no others; and do not go into this wholesale business of granting all local legislation to local boards, irrespective of the interests of the whole State.

Mr. OPDYKE—Mr. Chairman—

Mr. FOLGER—I rise to a point of order. The gentleman has spoken once.

The question was put on the amendment of Mr. Rumsey, and it was declared lost.

Mr. FOLGER—The question now before the house is on the amendment of the gentleman from Seneca [Mr. Hadley]. Upon that I will take a

few minutes to finish what I was about to say, just as my time expired when I was last on the floor. I had progressed so far in my remarks as to show that there was an evil in local legislation in the Legislature, and I take nothing back that I said to-day, and nothing back that I said upon a previous day upon that subject. It is an evil in the bulk of the legislation which it produces at Albany, and which goes upon the statute book. But I do differ with gentlemen in the remedy proposed for this. It is proposed to remedy this evil by giving to boards of supervisors the powers of local legislation. I endeavored to show hastily that the powers of local legislation which could be conferred upon boards of supervisors must be very much circumscribed, first, territorially, and, second, by the nature of the matters upon which they could be permitted to legislate; and I was about undertaking to say that the true remedy, in my opinion, is by rigid rule to compel legislatures to pass general laws under which this private relief, this local need, could be reached by private action outside the Legislature, and then confine all to those general laws. If you will turn to the article on corporations in the Constitution of 1846, you will find that the Legislature are compelled to pass general laws on the subject of banking, and they are not permitted to pass a single special charter on that subject. Since 1846 we have had no special bank charter, but does any one say we have not had all the banks we need? Does any one say that any people ever had a better banking system? Open to all to enter, safe to all, achieved entirely by silent private action in the State offices. That indicates my remedy for that local, special legislation so much complained of, and so justly—that the Legislature should adopt a general law upon every conceivable subject, and then be fastened to that general law and told that they shall not go outside of that to give any special privilege to anybody.

"The Legislature shall have no power to pass any act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws."

That is the language of the Constitution. That has worked well. Take it as to charters for villages. We have a general law for the incorporation of villages, under which villages can be incorporated in this State and have any power they desire to have—certainly any power they ought to have; but year after year our statute books are swollen with new charters and amended charters for villages, because in this Constitution a little escape was left for the Legislature by providing that they might exercise a discretion as to granting special charters. It was required to pass a general law, but it was allowed to grant a special charter when it thought the end not attainable under general law. And I say it is to the disgrace of the Legislature that they did not carry out that provision of the Constitution of 1846 according to its intent and spirit, and that they sought to evade it and have evaded it by yielding to the importunities of private postulates for special charters. The point has been raised again and again in the Legislature, that the special charters do not differ from the general laws on

that subject, and that they could not be granted without violation of the spirit of the Constitution, but with easy good nature to those asking for those charters it has been evaded. The gentleman from Kings [Mr. Murphy] has raised that point again and again in his place in the Senate. Now, this is my remedy. To tie the Legislature rigidly to the enactment of general laws, and only general laws. I conceive that your other remedy proposing the granting of power to supervisors over local legislation, for one thing is not broad enough. It will not include all the special matters that come here. Take the matter of granting relief in escheat cases. There are thirty-five bills upon the session laws of 1866. You would not grant that power to supervisors? It is a general matter, concerning the whole State, and should be governed by a general law, and no relief should be granted in special cases. Nor do you lessen the bulk of legislation by changing the source of it. If all is to be done by special acts, they are just as numerous, if passed by supervisors, as if passed by the Legislature. But a general law swallows all these private acts. Then, in regard to the question of corruption. It is said that a remedy would be found for it in granting the power to the board of supervisors. To my mind, that particular legislation which is called local and special, and which may safely be committed to these boards, very seldom brings any corruption with it—that is to say, the incorporation of a village, the change of a man's name, a bill to allow a religious corporation to sell real estate, etc., etc., they bring with them no money, and no money is offered to men to vote for them. They are not worth enough. The only way in which they induce corruption is this: When a representative from a district, has such bill in charge, and is desirous to have it passed, he may promise his influence and his vote to something else for the sake of having it passed. So that you do not thus reach the evil that is so much complained of, and which does exist, of excessive legislation for local purposes, and of corrupt legislation. For the diminution of legislation, I would go for constitutionally insisting upon general laws—a constitutional inhibition upon the passing special acts by the Legislature. Thus should we cut off this special legislation. And as to corruption, as has been well said, you must change human nature to relieve it from liability to corruption—that corruption which reduces men beneath the influence of their base passions. The great remedy after all is in the constituency; you must reach the root of the evil there. The electors must find men for representatives who are known to be removed far beyond reproach, whose characters have been formed and are known to the community to be sound.

Mr. SPENCER—I offer an amendment to strike out the section under consideration—

The CHAIRMAN—The Chair would state to the gentleman from Steuben [Mr. Spencer], that section 6 is now under consideration, and the amendment offered by the gentleman from Seneca [Mr. Hadley]—

Mr. SPENCER—I withdraw my motion.

Mr. RATHBUN—To what section does the amendment of the gentleman from Seneca [Mr. Hadley] apply?

The CHAIRMAN—The Chair understands that it applies to section 6, as a substitute for that section.

Mr. RATHBUN—The remarks of the gentleman from Ontario, [Mr. Folger], in regard to what he believes to be a remedy, induces me to read a proposition which has been agreed upon by the Committee upon the Powers and Duties of the Legislature—I believe presented by him, and which would seem to be in exact accordance with the views which the committee supposed would effect the remedy as stated by the gentleman from Ontario [Mr. Folger], and that it would, in a great measure, relieve us from the trouble of which everybody complains:

"The Legislature may, from time to time, make general laws for the formation of corporations, and alter or repeal the same; and all corporations hereafter to be created, except those for municipal purposes, shall be formed under such general laws. The Legislature shall not hereafter alter, amend or extend the powers of any corporation, except municipal corporations, by any special law."

That is the entire clause in regard to special legislation in the granting and amending of charters, but leaving these to be formed and amended in conformity with general laws to be passed by the Legislature. That wipes out entirely all that kind of special legislation, which is charged with being the great source of legislative corruption. I do not think there is anything gained in this matter by what is proposed in the amendment of the gentleman from Seneca [Mr. Hadley], or what is proposed by the amendment of the gentleman from Steuben [Mr. Spencer], providing that the Legislature shall, by general laws, confer power in special cases upon the board of supervisors—not to legislate. I would not put that word in, but to perform certain acts that are purely of a local and administrative character. The element of impurity, which is thrown in the teeth of the Legislature from all parts of this State, lies in this provision, and I think it would be well to protect the people from it by withdrawing from the Legislature all power over this special legislation on the subject of corporations.

Mr. ROBERTSON—As I understand, it is the universal desire of all the delegates now assembled here to preserve the legislation of this State free from these impurities which have so long mingled with and carried a current of evil through all the laws passed in this city in reference to local and private matters. In that one respect, in particular, our action here should be directed to break up a profession which has become exceedingly profitable, and drive the parties who practice it to a more reputable mode of livelihood than the lobby. We are anxious to get rid of and break up lobbyism; to rid ourselves of persons who infest our halls of legislation and infect our laws. If we are to have a lobby profession, let us transfer it to local boards. We know very well that, in such case, persons who engage in it will not find the profession so profitable to them as to enable them, at the expense of the public, rapidly to hoard up large fortunes. Now, sir, in regard to local legislation, I confess I am in favor of having in the Constitution, the fun-

damental organism of the State, some declaration in regard to what inalienable powers local bodies may possess for the purpose of legislating for the benefit of their constituents. With regard to some of the instances which have been produced here, in regard to the city of New York, I apprehend that the corruption which has been engendered, has not found its final nest and home in the city of New York. The City Hall, now in course of erection in the city of New York, it is said has been in the hands of the board of supervisors for the past ten years. Any gentleman who will turn to the statute books of the State will find out that it has been in the hands of half a dozen different bodies, and through the medium of laws passed, at the focus of legislation in Albany, and the delay has not been entirely owing to any particular impurity or corruption in the local boards; it has been in the hands of successive boards of aldermen and boards of supervisors and committees, and it has now reached a point in its construction which makes a prospect highly probable if not certain that there are those now living who will see the time when the building will be fully completed. [Laughter.] In regard to legislation on the subject of city railroads, I apprehend that they have not been so free from corruption and injury to the interests of individuals and the interests of the population of the cities of New York or Brooklyn, because those railroad companies have been chartered by the Legislature at Albany instead of being authorized by the local authorities. It will be found that on the spot where these evils exist, they can best be met and defeated; that it is much better to have the contest with gigantic corporations, which override the rights of individuals, to engage and defeat them in the place where the wrong is proposed to be carried out than to transfer it to a distant point of the State, where gentlemen, collected together from other parts of the State, who are not so familiar with local interests, are met together for the purpose of legislating for persons in whom they do not feel so much interest. I therefore think, whether this section includes more or less than it ought to the principle should be adopted in the Constitution of prescribing what should be the inalienable and exclusive authority vested in local boards. We should all put our shoulder to the wheel and strike out powers which ought not to be there and introduce those which ought properly to be there. This should not interfere with the authority and privilege of the Legislature to add other powers by general laws to the established powers of local boards, or take them away, as in their wisdom they may see fit, without interfering with the powers which should be conferred on them, from exercising which the Legislature should be excluded. It would be better for us now to employ ourselves in determining what particular powers should be given to local boards, and what ought to be left under legislative control, than to leave the arrangement and control of the whole to the latter.

• **Mr. OPDYKE**—I desire to enter my protest against lugging the affairs of the city of New York into this debate. The amendment under consideration expressly excludes that topic from

consideration. Besides which, the whole matter of the government of cities has been referred to another committee, which has not yet reported. One of my colleagues from the city of New York [Mr. Hutchins] has said many things in reference to the government of that city and the interference with its government here, from which, at the proper time, I shall express my dissent. When the interests of the city of New York shall come before the Convention I shall have something to say on that subject. At present I shall simply say that, while much may be said against the local authorities there, either for want of fidelity to the interests of citizens, or otherwise, much may also be said against the legislation of the State in regard to the interests of the city of New York. In the matter of New York city railroads alone, franchises have been granted by the Legislature of this State, over which I have always contended it had not the slightest authority or right, it being clearly an act of usurpation, or, more properly, an act of spoliation—legalized spoliation. It has absolutely given in perpetuity franchises of this character worth ten millions of dollars, while the city itself, I believe, has not granted one. But, sir, I desire to say a single word more than I have already said in support of the original section reported by the committee. Gentlemen seem to be very much afraid of conferring on local authorities the powers and duties of legislation. An attempt has been made to distinguish between administrative and legislative powers. Now, sir, what is legislative power? It is the right to establish for the government of the community within their own jurisdiction, simple binding rules to which all must conform. I should like to know what possible objection there can be for any one of the counties of this State to establish for themselves the rules of action that shall govern themselves, provided, always, that they are in consonance with the laws of the State? We all admit that the laws of the State are superior, and that if anything be done by these local boards in contravention of or contrary to those laws, it would be illegal. But, so far as they conform to those laws, and relate exclusively to their own interest, there can be no doubt that it would be better for them to do it for themselves, than that those who know nothing about it should do it for them. All experience teaches that a man will guard his own interests more carefully than others will guard them for him. Look at the condition of the States constituting this Union. The government of the United States is supreme so far as the Constitution has conferred upon it governing power. What should we of this State say if the Congress of the United States should, in the course of their legislation, go on passing laws relating exclusively to this State, and not in conformity with our wishes? If they had done it, in consonance with their constitutional rights, there would be a clamor for a change of the Constitution to take from them that power. We would rather exercise control over our own local matters, and our own local interests. My colleague from New York [Mr. Hutchins], notwithstanding all he said in relation to the impropriety of giving to the city of New York full power to control its local interests, and to legislate for

itself, goes back and supports the original proposition before us, as I understand him. Consequently his very earnest speech in opposition to the report of the committee ended by declaring his readiness to support it, except his effort to distinguish between administrative and legislative power. I hold that every county now exercises legislative power, and we do not propose to give them any power that will conflict with the legislative power of the State.

Mr. ANDREWS—I offer the following amendment:

"The boards of supervisors of each county in the State shall possess exclusive power of local legislation and administration upon subjects over which by general laws they now have jurisdiction. The Legislature shall have power from time to time, by general laws, to enlarge the powers of boards of supervisors over subjects of local legislation and administration, and the internal affairs of their respective counties and of the towns thereof. When additional power of legislation and administration shall be conferred by the Legislature as herein provided, such power shall be exclusive until the law conferring it shall be repealed."

I do not offer this with the idea that it will reconcile the conflicting views of the committee upon this question, but simply as a suggestion which, perhaps, upon reflection, may result in a provision which will somewhat nearer meet the views of the majority of this body than the propositions which have been pending before it. My proposition is simply this; to make the jurisdiction of the boards of supervisors exclusive as to all those subjects which, by the existing statutes, are committed to them, and to authorize the Legislature to enlarge the legislative power of boards of supervisors and to make that power exclusive until the law by which it shall have been conferred shall be repealed. I claim by this, Mr. Chairman, that we shall not abandon our experience or enter upon a dangerous field of experiment. Because as to the powers which under general laws the boards of supervisors now exercise they are well understood, and no danger has resulted from that deposit of power by the Legislature; and when you provide for the added power of legislation, then the provision which I have suggested makes that power exclusive in the boards only, until by experience it shall appear that this power should be resumed by the Legislature. Now let us see, Mr. Chairman, as to the existing powers of boards of supervisors; and if gentlemen will turn to section 7 of the report of the committee, which contains the enumerated powers which the committee proposes to confer upon the boards of supervisors, they will find, by comparing it with the statute, that these boards, in the great majority of the cases stated, possess, under existing laws, the powers which are enumerated. This section provides that boards of supervisors shall have exclusive jurisdiction over "the establishment, construction, regulation and discontinuance of roads and bridges," etc. Under general laws, the supervisors now have that power, together with the local authorities of the respective towns. By the section reported

they are to have jurisdiction over "the establishment, incorporation, regulation and discontinuance of plank, turnpike and macadamized roads." This supervision is now regulated by general laws, and as to "the raising money by loan or tax for town, village or county purposes," that power already exists in the supervisors under the present laws for county purposes.

Mr. HARDENBURGH—I desire to put an interrogatory to the gentleman. Is there any such power now, as that a county legislature can raise money for village or town purposes?

Mr. ANDREWS—I qualified the statement. I said for county purposes. That power vests in the board of supervisors. Supervisors now have jurisdiction in respect to "the purchase, management, and sale of real estate and personal property, for the use and benefit of the county;" also as to "the erection of new towns and wards, changing the names thereof, and the alteration of town and ward boundaries; the correction of erroneous and illegal assessments; the compensation of town and county officers; the care and support of town and county poor." Now, I suggest, Mr. Chairman, and gentlemen of the committee, that it would be safer to confirm the powers already existing in the board of supervisors, making that power, as to those subjects, exclusive—at the same time giving the Legislature power, by general laws, to confer other powers of legislation upon those boards, but leaving within the power of the Legislature the right to withdraw them if, from experience, it should prove that they were not properly vested in the boards of supervisors.

Mr. E. BROOKS—Before this question is taken, I wish to make a single remark, which will not occupy the attention of the committee more than one minute. I desired to make the remark when the gentleman from New York [Mr. Hutchins] had the floor, but declined to yield. It is this: that within my experience as a Senator of the State of New York, gentlemen of wealth and respectability, such as A. T. Stewart and D. H. Haight, of New York, large real estate owners there, offered, through me, to pay two millions of dollars into the city treasury for the right to run a railroad along, or parallel to Broadway; and when I submitted that proposition to the Senate of this State, it had no more moral effect than water spilled upon the ground would have had; and since that time, over and over again, these railroad franchises have been granted. That is one fact. Now for another. Sir, we found, one Sunday morning, in the city of New York, in front of Ann street and St. Paul's Church (as every gentleman knows, the most crowded thoroughfare in that city) the street torn up, the pavement removed—the Sabbath day desecrated, and the street turned topsy-turvy—in order that one of these railroad companies, franchised by the State of New York, might cross Broadway at that perilous point, to make a connection with one of the belt railroads of the city; and, sir, when they were asked why they did this act, they said they had the authority of the Legislature to do it, and pointed to a law passed by the Legislature sitting in this capitol. If the power to grant such a franchise had existed in the

city of New York, no such thing could have been done.

Mr. FOLGER—Did it not turn out that they had no such power, and that there was no such law?

Mr. E. BROOKS—Perhaps they had no law; but it took the city authorities to discover the fact; and when they found they had no law—perhaps in the exercise of a “higher law” of self protection—they restored the pavements and made the thoroughfare as it was previously.

Mr. A. J. PARKER—I am opposed, for one, to conferring much power upon boards of supervisors in the way of legislation. If we make any mistake upon that subject now it cannot well be corrected until the end of another twenty years, when there shall be another Constitutional Convention. I believe it is safer to leave this matter to the Legislature, as it was left when the present Constitution was formed, giving them power to confer upon boards of supervisors certain authority, administrative and legislative, and then there will always exist the power to repeal and to correct any evil that may be found to exist. I believe, Mr. Chairman, that the remedy for a great deal of the corruption which has existed in the Legislature, and for the multiplicity of laws that have been passed, can be had in a very simple way, namely, by expressly confining the Legislature to general laws and prohibiting the passing of special acts of incorporation. Early in this Convention I introduced two resolutions upon that subject, and to that end with a view to confine them to general laws, and they were referred to committees, and to this day I have heard nothing further from them. Now, the great difficulty in the Constitution of 1846 was that it was left to the Legislature to say whether they could properly pass a special act, or whether the object could be attained under the general law; and the consequence was that, whenever they passed a special act, and whenever the matter was brought before the court and claimed to be unconstitutional, the answer very properly was that it was left to the Legislature to judge of, and not to the courts; and the consequence has been that though there have been general laws under which almost all incorporations might have been formed, and amendments had, yet the Legislature have, year after year, passed hundreds of special acts, and they incur the statute books, all of which might well have been left alone. Now, Mr. Chairman, I am in favor of general laws. We may look to England and profit by her experience, where, for the last few years, there has been an act in operation so general in its provisions that it authorizes the formation of companies for any legal purpose—to transact any legal business—as broad as that, sir. I may not have the precise words of the act of parliament, but I am sure I have the substance. And under that broad and general law, comprised in a few sections, most of the corporations now existing in all the various industrial pursuits in England are organized. It is not necessary, even, to confine them to the special purposes for which general laws are passed here. Let the Legislature, at all events, give us general laws, if they do not give us one general law. There need be but few upon the

statute books, instead of the two thousand pages that will fill the volumes, it is said, of the legislation of last year. I am opposed, as I have said, to giving much power to the boards of supervisors where there is no veto and no check. I am in favor of the Legislature retaining it, but under such restrictions as will prevent the multiplicity of acts being passed.

Mr. ALVORD—I agree, Mr. Chairman, in the main, with the remarks of the gentleman who has just closed [Mr. A. J. Parker], in reference to what should be done by the Convention in regard to restricting the Legislature from the passage of special laws. I have, in conjunction with the gentleman from Ontario [Mr. Folger] looked over the laws of 1866, and I find in special acts of incorporation, in questions in which the power of the State by way of escheat was concerned, and in cases where there was relief granted with reference to the incorporation of churches, that four hundred and five of the nine hundred and twenty-four laws passed in that year, were taken up with those three individual subjects. Each and every one of them, by a general law passed, could be taken care of without the necessity of coming with four hundred and five cases for the Legislature of this State to act upon. But, in reference to the question directly before us. The proposition has been here made to give to the board of supervisors in terms, without the action of the Legislature, exclusive jurisdiction upon local questions. The proposition of the gentleman from Steuben [Mr. Rumsey] meets my approbation rather than the proposition of the gentleman from Seneca [Mr. Hadley], because I do not desire to make it imperative that local legislation, in the broad sense in which it was contained in the proposition of the gentleman from Seneca [Mr. Hadley] should be given, without any restriction whatever, to the board of supervisors. I thought there was a sort of check in the proposition of the gentleman from Steuben [Mr. Rumsey] in that regard. But my colleague [Mr. Andrews], here, has brought before this committee at this time, it seems to me, what we would all desire in this regard. Under the Constitution of 1846 there was a privilege given to the Legislature to confer upon the boards of supervisors certain legislative powers, but they were legislative powers to be exercised concurrently with the Legislature. The Legislature was not deprived of the right to act upon these separate individual cases in which they gave to the boards of supervisors legislative powers. Now, we have tested the fact for the last twenty years that in all the powers which have been, under the laws of this State, given to supervisors, they have in the main acted rightfully. They have been always judiciously exercised within the limits of the different counties. But, notwithstanding that, sir, when any local trouble or difficulty in a certain county, or an apprehension of it obtains, then the individual or the community seeking a certain relief which was intended should be granted by the board of supervisors, fearful that he or they cannot get what they want from the supervisors, come to the Legislature, and through the act of their local representative, he being in their interest, and without a knowledge of the particu-

lar surroundings of the case by an hundred and fifty-nine out of the one hundred and sixty of the members of the two houses, they get the measure passed by the Legislature, having concurrent jurisdiction, which they could not have succeeded in passing through their board of supervisors at home. For that reason I am in favor of the proposition of my colleague [Mr. Andrews], that so far forth as the laws have already given jurisdiction to the boards of supervisors in the matter of legislation, they should have exclusive jurisdiction. Whatever of experience we have had, I think, would render safe the giving that power to them exclusively. Then, in the future, so far as experience from time to time shall show it to be necessary, let the Legislature have power to confer upon those supervisors a more extended power of legislation. Then, with your general laws in reference to these matters we have spoken of, and your local legislation taken away from the Legislature and confided to the supervisors, you will find that your statute books will dwindle down to about one hundred or one hundred and fifty laws, all for the public good; and all this local legislation will be lessened to the amount absolutely necessary, and this immense crowd of men who come down here, in the first instance, to carry out some local project, but who become more or less acquainted with the ways and means by which legislation is carried on, thus becoming corrupt, will be removed from out the precincts of this city, and we shall have purer and better legislation in the future.

Mr. M. I. TOWNSEND—I desire to say one word in which to express my concurrence with the views put forward by the gentleman from Albany [Mr. A. J. Parker]. I believe if this Convention shall restrict the Legislature absolutely to the passage of general laws only in regard to corporations, very many of the evils under which we are suffering now, in connection with the corrupt action of the Legislature and over legislation, will be removed. In illustration of the evils resulting from the passage of special laws, I wish to cite to this Convention one law passed by the last Legislature, as I think it will illustrate the beauty of the present system perhaps, as perfect as almost any instance that can be quoted. A certain railroad in this State, not very prominent in its position and name, had been for three or four years violating a general law which prohibited any railway company taking more toll than was allowed by the general railroad law of the State, and imposing a penalty of fifty dollars for each violation of the law. Certain actions had been commenced against that corporation to obtain the penalties, and the corporation, wishing to continue the practice, came to the Legislature and solicited the passage of a special law by which that railway should be exempted from the penalties imposed upon railroads if they violated the general railroad law, and the Legislature very kindly enacted it, and it stands now as one of the laws of this State. By that act, a law making it extortion for a railway company to charge more toll than provided by the general railroad law does not apply to this peculiar railroad corporation; and that is the law now in

this State. Had we had a law prohibiting the passage of special laws the statute book of the State would not be disgraced by a law of that character.

Mr. FOLGER—I wish to state in reply to the remarks of the gentleman from Rensselaer [Mr. M. I. Townsend], that although I was opposed to the law he refers to for the reasons he states, there were some mitigating circumstances about it. It does not stand quite so baldly on the statute book as he would represent. Both parties in that matter, I think, were present before the Legislature, those advocating the bill and those opposing it, and it was not passed until those interested in the prosecution for the penalties under that statute expressed themselves satisfied with the passage of the law. So it is not quite so bad as he states, although bad enough.

Mr. M. I. TOWNSEND—I find no fault as affecting those who brought the action, because they were perhaps the parties themselves, and were not worthy of consideration. But there was one party whose interests were utterly disregarded, and that party was the people of the State of New York.

The question was then put on the amendment of Mr. Andrews, and it was declared carried.

A count was called for.

Mr. BICKFORD—I would like to hear the amendment read.

The SECRETARY read the amendment of Mr. Andrews and the Chairman again announced the question to be on the amendment.

Mr. HADLEY—Mr. Chairman, it appears to me that the substitute of my honorable friend from Onondaga [Mr. Andrews] is virtually a cognovit, and that boards of supervisors may be safely intrusted with the powers of legislation in relation to the local and internal affairs of their respective counties. He proposes by his amendment to incorporate into the new Constitution all acts of the Legislature now existing, granting powers of legislation to boards of supervisors. He admits that so far as they have been trusted to legislate they have acted honestly, promptly and wisely. Can he say as much of the Legislature? In my judgment, what he says of the action of the various boards of supervisors is deserved and true. This being so, "having been found faithful over a few things," why not trust them further? They are the immediate representatives of the people of their counties and acting at home, in view of their constituents, under eyes that never slumber in watching their conduct. If, then, their past action is so satisfactory as to indorse wholesale all laws now existing, why so much hesitancy about the future? But, sir, there is a very material difference between the amendment which I had the honor to propose, and that of the gentleman from Onondaga. In the former this power is expressly given by the Constitution to the boards of supervisors, subject to such rules and regulations as the Legislature shall prescribe, and it is made the duty of the Legislature at its first session to prescribe such rules and regulations. Adopt this, and the Legislature must act, and the board of supervisors will have the power, but under the substitute of the gentleman from Onondaga, the supervisors will have no power,

except such as the Legislature may see fit to grant; and judging of the future by our experience of the past twenty years under the present Constitution, which gives quite as much power in the Legislature to grant powers of legislation to boards of supervisors as the substitute of my friend. The Legislature would never increase the powers of boards of supervisors to legislate in relation to their local and internal affairs. Sir, the amount of money raised during the war by and under the legislation of boards of supervisors, was enormous. It was quickly raised, economically raised, and faithfully accounted for. I believe they can be safely trusted. For these briefly expressed reasons, among others, I am opposed to the substitute of the gentleman from Onondaga.

Mr. DUGANNE—While I am in favor of the entire principle of delegating the authority over their local business and local affairs to counties and towns, I wish that the people of the whole State shall retain in their own power the privilege of re-entering at any time upon the sovereignty of the whole commonwealth; therefore, I am in favor of such a contingent restriction upon any exclusive power delegated to these local legislatures as shall reserve to the State Legislature the right, at some future time, to redress any grievances that may exist under exclusively local legislation. At the proper time I shall offer an amendment for that purpose. But, Mr. Chairman, I conceive it is our duty in this Convention to assert principles, and not to leave measures to determine those principles hereafter. We are here to prohibit, or we are here to provide for; and yet there appears to be a disposition in the Convention, among gentlemen who acknowledge and assert that Legislatures may be corrupt, and who have yet, in my opinion, failed to introduce or enact anything that will redeem them from being corrupt; there is a disposition here, I say, to shirk our own duty, and to leave everything to the Legislature in the future. Now, Mr. Chairman, if it is right that the State shall delegate certain of its powers to the local legislatures of counties, let us assert that right in a constitutional clause. Let us not leave it to be played with by Legislatures hereafter—to be enacted and repealed as certain local considerations or party considerations may determine, from time to time, to be convenient or to be policy. We have, in this Convention, some one hundred gentlemen of the legal profession—gentlemen who illustrate their profession by their eloquence here, as they illustrate it by their practice in the courts. Are these one hundred legal minds not competent, with forty years experience of two Constitutions, to determine whether it be better to retain entire jurisdiction in the Legislature or to delegate portions of it to the people of their respective counties? If they are not, then, twenty years or ten years of new experience cannot bestow that knowledge on future Legislatures, which we, members of this Convention, do not possess at this time. If it be a right that boards of supervisors should be endowed with certain exclusive powers of legislation, let the Convention proclaim that right, and incorporate it in the Constitution; if it be not right, let us leave it out.

Whatsoever we do, let it be assertion or negation—not a mere shifting or postponement of our responsibility.

Mr. RATHBUN—It seems to me, sir, that we are acting here upon a principle entirely erroneous.

Mr. SCHOONMAKER—I rise to a point of order. The gentleman [Mr. Rathbun] has spoken four or five times.

The CHAIRMAN—The point of order is not well taken. The gentleman has not spoken before on this subject.

Mr. RATHBUN—It is assumed that no confidence can be reposed in the Legislature. There seems a disposition to turn away from the old, tried and safe rules of action. Now, sir, only a few days ago we were told by a very large number of gentlemen that there was no corruption in the Legislature at all; it was as good as it ever was, and nobody could put their finger upon any member or any act of any member showing corruption; and upon the strength of that statement the senate districts were retained as they were, and a very strong minority of the Convention were in favor of retaining the single assembly districts as they were, and it was upon the ground that there was no corruption. Now, sir, when we come to talk about other matters, even the proposition to leave to the Legislature the power to grant authority to boards of supervisors to perform certain local duties, it is not to be trusted to the Legislature. Why, sir, if we are to judge from the acts of parties here, that body is not worthy to be anywhere; it is not worthy to be allowed to assemble anywhere. Why, sir, the proposition is really very strange, that the Legislature, coming from the people of the State of New York and the immediate representatives of the people of the State, shall not be trusted at all to try an experiment to see how much more power shall be given to the boards of supervisors of counties than has already been given to them. Gentlemen very gravely insist that the power to be vested in the boards shall be put in the Constitution; that by constitutional provision sixty other independent legislatures may be established in this State. Is this wise? Is it prudent? It is an experiment, a thing to be tried—we cannot now tell whether it will be beneficial or otherwise. We cannot safely try experiments in this way. It would be unwise because the Constitution cannot be changed. You cannot amend a Constitution every year, but you must abide by it, or subject the people to a large expense of going through forms of an amendment to the Constitution. This matter of conferring more power is one of experiment, and I submit to the members of this committee that the Legislature of the State is the proper body to determine how much shall be done by way of experiment. There is no reason that I know of, and I defy any gentleman on this floor to name any reason, why the Legislature are not to be trusted on that subject. Are gentlemen afraid they will be liable to be bribed upon the subject of conferring power upon their own constituency? Every man of them in this House representing a board of supervisors, and every Senator representing different boards of supervisors—are they

the men to stand up and say that experiments shall not be tried, and to say to the boards of supervisors of the counties, "You are not fit to be trusted." Why, sir, gentlemen forget that these men are responsible to these boards of supervisors and their constituents, and that if one member of the Legislature will not do his duty another will be found that will; if one Senator refuses another will be found that will obey the people and try that experiment. It is in the hands of the people, and they can compel the Legislature to try these experiments as far as they think it desirable. But, to make it permanent in advance, and to fix it so that it cannot be altered or revoked, is unwise and indiscreet, in my judgment. I submit that the true way is to treat the Legislature as men and treat them as persons who can feel responsible to their constituents, treat them as men that are not yet wholly—I cannot undertake to find a word that would express the meaning here—wholly unworthy of confidence. I say, let us go along in a quiet way, and try experiments in a legitimate and proper manner by reposing confidence in the Legislature, who are from and of the people, and see whether the people cannot demand and receive from them such power and authority for the boards of supervisors of the counties as they deem proper and right; and if they fail the Legislature can amend, correct and repeal.

Mr. E. A. BROWN—I desire to say that in my mind there are insuperable objections to putting into the Constitution a provision embodying the amendment of the gentleman from Onondaga [Mr. Andrews]. It seems to me that gentlemen will see there are such objections to the proposed amendment. The laws now confer upon the boards of supervisors power to change the site of the county buildings a distance of more than one mile, by the action of two consecutive boards, and by a majority of two-thirds. If this amendment is adopted and becomes a part of the Constitution, and the county buildings of any county should burn down, and the unanimous voice of the people of that county desire to change the site of those buildings more than one mile, it could not be done, under the amendment to the Constitution now proposed to be made, until the lapse of two years, in which two boards of supervisors could act in two different years, and I believe by a two-thirds vote. I mention that case simply as an illustration to show the impropriety of undertaking to make existing laws, conferring power upon boards of supervisors, a part of the Constitution.

Mr. ANDREWS—The gentleman may have omitted to notice that the amendment gives the Legislature power to enlarge the authority of the boards of supervisors upon all questions upon which they have jurisdiction.

Mr. E. A. BROWN—I understand the amendment of the gentleman is to confirm, by a constitutional provision, all the laws that now confer powers upon the boards of supervisors. Now, sir, the Constitution as it is, gives the Legislature power to confer upon the boards of supervisors certain other powers. The objection is made by gentlemen that it does not make those powers exclusive. In my judgment, they should not be

exclusive. In this great State there are many hundreds of things liable to come up at any moment, and when the boards of supervisors are not in session—measures to which there is no objection on the part of anybody and which may be passed through the Legislature to remedy difficulties and supply defects that are not remedied by general laws. And this fact occurs to me at this moment, in regard to roads. By the general laws, the commissioners of highways are prohibited from laying out a road less than three rods wide; the laws now prohibit laying out a road through a garden, but it may happen and often does happen, that the authorities of the village or authorities of the town, by the almost unanimous wish, and in accordance with what is conceded to be the great interest of the village or town may be required to lay out a certain road less than three rods wide—one foot less; yet it is impossible to lay it out where it ought to be, if it is necessary for any reason to be made a foot narrower than three rods. So in respect to the case of a garden. If the proposed road, however necessary and important, as a public improvement, it might be, is projected through a garden, the law prohibits taking any portion of such garden, however small or valueless the same may be. It is therefore impossible, by existing laws, to lay out such a road, without the consent of one man who may stand out in opposition to the wishes and to the great interests of the whole community. Sir, is there any objection to asking the Legislature to remove that difficulty, and authorize the laying out of this road one or two feet narrower than the law now requires, or take off a foot or two of a man's land, if he did not wish to part with it at a reasonable price, and on paying him a fair compensation in the usual mode for that land. I do not discover the great objection that gentlemen appear to see in the Legislature having power to pass acts to relieve the people from such difficulties. It is said by gentlemen that there are a great many of them; that a great many applications are made to the Legislature. Sir, this is a great State, and the people of this State have a great many interests that are entitled to consideration. The gentleman complains that there were a great many applications to amend charters of cities and villages. Sir, there are a great many cities and villages in this State, and experience shows, from time to time, that the protection of the interests of the people of these cities and villages requires the exercise of power on the part of the Legislature, that cannot be well reached by any general laws that are passed or by the usual provisions of their charters, and a great many other things occur from time to time in cities and villages where remedies may be needed and the Legislature may be called upon to afford those remedies. Sir, another thing; I think that the framers of the Constitution of 1846, in providing for conferring upon the boards of supervisors these powers, intended to meet emergencies that might arise, such as have arisen during the war of the rebellion, when the people of counties were called upon to raise men and money for the purpose of sustaining the

government and the laws now exist upon the statute book conferring this power upon the boards of supervisors, and which will be made a part of the Constitution if this amendment of the gentleman shall prevail. Is it said that the Legislature has failed when any emergency arose to confer upon boards of supervisors the necessary powers? On the contrary, we all know that when the emergency has arisen the power has been exercised by the Legislature, and it would seem that it has been so well exercised that gentlemen desire to make the authority now vested in the Legislature permanent in the boards of supervisors, by a provision of the Constitution itself. I am opposed to that. I am decidedly in favor of leaving the matter in the hands of the Legislature, where it now stands.

The question was put on the amendment of Mr. Andrews, and it was declared carried, on a division, by a vote of 40 to 38.

SEVERAL DELEGATES—There is no quorum voting.

The CHAIRMAN—The Chair is of the opinion that there is a quorum present. Gentlemen will please vote.

The question was again put on the amendment of Mr. Andrews, and it was declared carried, on a division, by a vote of 53 to 49.

The CHAIRMAN announced the pending question to be on the amendment of Mr. Hadley as amended by the substitute of Mr. Andrews.

Mr. BARNARD—I have an amendment to propose to that, as follows:

The SECRETARY proceeded to read the amendment:

Add to the section: "The salary or compensation of any officer payable out of the treasury of any county shall not be increased during his continuance in office without the assent of a majority of the members elected to the board of supervisors of such county."

Mr. BARNARD—The object of this amendment is to remedy the evil which we have experienced, at least in the county of Kings. Gentlemen will run for an office there, seeking to be elected or appointed, knowing what is the salary or the emoluments of the office, and as soon as they get elected they apply to the board of supervisors to increase the salary or compensation, and upon due deliberation the board of supervisors may refuse to do it. They then employ one of the lobby agents to come to the Legislature, and a bill is passed increasing their salary and compelling the board of supervisors to raise money by tax to pay it. We have experienced this several times in the county of Kings. Inasmuch as you are about to confer upon the boards of supervisors local administrative powers, surely they ought to be the best judges what compensation to give to the officers of the county—certainly better judges than the Legislature. We have had no difficulty in past times in finding gentlemen willing to fill the offices of the county for the salaries which have been fixed by the board of supervisors, but as soon as these gentlemen get elected we find them then seeking for an increase of salary, and failing in a local board, they come to the Legislature and are successful. So we have had cases where larger salaries have been authorized to be paid

to these officers by the Legislature than some officers get who fill higher positions in the estimation of the community, and it is for the purpose of preventing an increase of salary on the part of county officers without the consent of the board of supervisors that this amendment is offered.

Mr. GREELEY—Is the amendment open to amendment?

The CHAIRMAN—It is not.

The question was put on the amendment of Mr. Barnard, and it was declared carried, on a division—ayes 72.

Mr. VEEDER—I move an amendment to the amendment now adopted, as follows: After the word "increased" insert "or diminished."

The question was put on the amendment of Mr. Veeder, and it was declared carried.

Mr. BARNARD—I offer the following amendment:

The SECRETARY proceeded to read the amendment.

Add to the section:

"No debt shall be created whereby any county, town or village shall be made liable, except in anticipation of the collection of taxes after the same shall have been levied, unless the same shall have been submitted to a vote of the people of the county, village or town to be made liable therefor, and received the approval of a majority of the votes given on the question so submitted."

Mr. DUGANNE—As I regard it rather an important subject, I move that the vote by which the amendment of the gentleman from Onondaga [Mr. Andrews] was adopted be reconsidered, and that the motion lie on the table.

The CHAIRMAN announced the question to be upon the motion of Mr. Duganne.

Mr. DUGANNE—I did not wish to bring it up immediately. I ask that it lie on the table.

The CHAIRMAN—The Chair will inform the gentleman, unless decided immediately, it cannot be entertained. Does the gentleman withdraw it?

Mr. DUGANNE—I withdraw it.

The CHAIRMAN announced the question to be upon the amendment of Mr. Barnard.

Mr. FOLGER—That amendment is so important it ought to be carefully examined, therefore I move that the committee do now rise, report progress and ask leave to sit again.

The question was put on the motion of Mr. Folger, and it was declared carried.

Whereupon the committee rose, and the President resumed the chair in Convention.

Mr. BELL, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on Town and County Officers, etc., had made some progress therein, but, not having gone through therewith, had instructed their chairman to report that fact to the Convention, and ask leave to sit again.

The question was put upon granting leave, and it was declared carried.

The hour of two o'clock having arrived, the Convention took a recess until half-past seven o'clock.

EVENING SESSION.

The Convention met at half-past seven o'clock.

Mr. L. W. RUSSELL—I ask indefinite leave of absence for Mr. Merritt on account of sickness in his family. I have received a telegram from him stating that one of his children is dying and that other members of his family are sick.

No objection being made, leave was granted.

The Convention resolved itself into Committee of the Whole on the report of the Committee on Town and County Officers, other than Judicial, etc., Mr. BELL, of Jefferson, in the chair.

The CHAIRMAN announced the pending question to be on the amendment offered by Mr. Barnard to the amendment offered by Mr. Hadley, as amended by the amendment of Mr. Andrews.

Mr. BARKER—Is it in order now to move a reconsideration of a vote taken on this subject today.

The CHAIRMAN—The Chair is of opinion that it is.

Mr. BARKER—Then I desire to move a reconsideration of the vote of the committee by which this amendment was adopted. The proposition was offered by the gentleman from Kings [Mr. Barnard], "the salary or compensation of any officer payable out of the treasury of any county, shall not be increased or diminished without the consent of a majority of the members elected to the board of supervisors of such county." The effect of this amendment is to give the board of supervisors the power to regulate the salary of an officer which they cannot create, and which the Legislature may authorize to be paid out of the treasury of the county. Now, I insist that if the Legislature creates an office and fixes the salary of the officer, and directs it to be paid out of the county treasury, the board of supervisors ought not to have a veto power over his compensation, and I believe the committee could not have understood the meaning of this amendment. If it related to the office (and there are instances where the board of supervisors fix the salary), then there would be no objection to it, nor any meaning in it: because the board of supervisors by a majority vote, could fix his salary. I hope that the whole amendment will be stricken out on this vote to reconsider, or at least I would like to hear some expression on the part of members of this committee on this point, before the subject is passed over. It elicited no debate, and I shall be pleased to hear from the gentleman who presented it, that we may know the motive of introducing it. I do not think we need a constitutional provision on this subject.

Mr. BARNARD—The time for debate being limited to ten minutes compelled me to speak very briefly upon the merits of the proposition. Whether the gentleman [Mr. Barker] was in his seat or not, I do not know. I stated the facts in regard to this matter, which it struck me were sufficient to justify the introduction of this amendment. I stated at the time that we had instances in the county of Kings where the board of supervisors had fixed the salaries of officers, where persons had permitted themselves to be elected or appointed to such offices, and after they had entered upon the duties of the office they had

applied to the board of supervisors to increase their salaries and it had been refused. Then they came to the Legislature, and the Legislature, by virtue of its paramount and superior power, increased their salary, although we had plenty of individuals competent to fill the office, who were willing to serve for the salaries which were appointed by the board of supervisors. Now the gentleman states there may be cases where the Legislature may create offices and fix the salary of the office and order it to be paid out of the county treasury. I hope there are few such cases. I do not know of any where the local board of supervisors is not as competent to fix the salary of a local office, having in view the condition of the county, the rate of interest, living, etc., as the members of the Legislature, and if there is any object in having this Convention revise the Constitution, and if I know the motives which induced many of the people of Kings county including myself, to vote for a Convention to revise the Constitution it was to curb the power of the Legislature in thus interfering with our county expenses and to curb the power of the Legislature in interfering with the increase of the debts of our counties, cities and towns. It should be a matter left to the jurisdiction of the people with the concurrence of the local authorities. I am satisfied that our county expenses are increased many thousand dollars every year owing to the circumstance that when the board of supervisors have refused to increase the salary, the parties have come to the Legislature and got laws passed, increasing the salaries and causing them to be paid out of the county treasury. Now, it is absurd to say we cannot regulate the salaries of our local officers, to say we cannot look to the circumstances of the times when we pay salaries that are paid in proportion to other parts of the State, owing to the increase of living—to say we cannot choose as well by our local legislative bodies; that the common council of the city of Brooklyn and the board of supervisors of the county of Kings cannot judge what shall be a sufficient salary to pay our officers, and then having passed on this question to have those officers come here to Albany and get a law passed through increasing their salaries, and thus adding for all coming time an increase of expense on the county. It is reform of this kind that our people want; some means to check the expensive legislation in Albany when it comes to be unnecessary. If there is anything that the board of supervisors and the council of the city are competent to pass upon, it is fixing the salaries of local officers; and to say they cannot do it, to say they would be likely to fix salaries so low that we cannot get persons to fill offices; we have not yet had an experience of that kind, but we know it is a great deal easier for a man who wants his salary increased one thousand dollars to pay five hundred dollars to an agent to come here and get it increased, and thus that increase is kept on for all future time. The point I want to get at is this, that the board of supervisors itself should have the right to pass on the increase of any salary. If the gentleman can point out any instance where the Legislature will increase an office of a county character which we

do not want, which our people do not desire, and send him down to serve in our county and compel the board of supervisors to raise money by tax to pay that salary, and to go on increasing it at the pleasure of the Legislature, he has a case in his mind that I am entirely ignorant of. I know of no such case, nor ought there to be any such case. The duty of the Legislature is to pass general laws for the whole State, and if you create State officers they are to be paid out of the State treasury and their salaries may properly be fixed by an act of the Legislature; but when we have county officers to do county business, or State officers to do State business, or town officers to do town business, it appears to me the local bodies having the raising of taxes are the best qualified to say what shall be the compensation for those officers, and I shall rue the day when the Legislature can saddle officers on us against our will, and give them salaries which shall have to be raised and paid for out of the pockets of the local constituencies. It is not for that purpose, not knowing any such case, that I offered the amendment. It is one of those wise measures of reform that my constituents desire, and that portion of them which voted for this Convention voted for it under the idea that we might obtain it by a constitutional amendment.

Mr. BARKER—If the gentleman will indulge me, I will cite a case to him. The great portion of the litigation in the city of New York is done by local courts, the superior court and the court of common pleas, as they now exist. Their salaries may be fixed by the Legislature; they are, and are very properly, fixed by that body. They are directed to be paid from the county treasury of the city and county of New York. There are officers without that body and not connected with it, and if the Legislature see fit to increase their pay the board of supervisors of the city and county of New York have a veto power. So it is in the city of Buffalo. The board of supervisors there would have a veto power upon increasing their salaries and compensation. I submit that officers of this character, surrogates and sheriffs, their fees are fixed by the Legislature for the duties they perform, summoning jurors among other acts. Many other acts they do for the county. There are general provisions which apply to all the counties of the State for that class of executive officers, and they are paid out of the county treasury, and yet every board of supervisors is called upon to pass on this act of the Legislature before it can be operative. And then again, I will suggest to the gentleman that his proposition does not meet the class of cases which he designed the prohibition to apply to. He says the Legislatures create unnecessary officers and send them down to perform their duties in communities which never asked for them. If that be then his amendment does not reach that case, because it only applies to instances where there is an effort made to increase or diminish the salary, but he can serve and make the county pay the salary when the Legislature in the first instance fixed the amount of the salary. To my mind, the gentleman has not well considered the language in which he has clothed his proposition. It certainly ought to be

voted down in the manner in which it is now presented.

Mr. GERRY—I desire simply to make a correction in regard to the remarks of the gentleman from Chautauqua [Mr. Barker] who has just spoken, that the Legislature fixes the rate of salaries to be paid to the judges of the superior court and the court of common pleas. It is not so in New York city. It is fixed by the board of supervisors.

Mr. SCHUMAKER—I wish also to say that the supreme court judges of the city of New York are State officers, and their salaries are fixed by the State at \$3,500. The board of supervisors made it \$5,000. They increased the pay. They thought the Legislature did not give sufficient pay to the justices of the supreme court, and the supervisors of the city and county of New York increased it to \$5,000.

Mr. GREELEY—I desire to give the gentleman from Chautauqua [Mr. Barker] one instance that just now occurs to my mind, that seems to me to negative the idea of the propriety of leaving this power with the Legislature. I think it was last winter that the Legislature of this State, without any notice to the people of New York—certainly without any desire on their part—increased the pay of our superintendent of police to \$7,500 per annum—nearly double the salary of the Governor. I do not desire to see a power to increase salaries vested in the Legislature of this State, and I wish it exceedingly guarded if it is transferred to the boards of supervisors. But certainly I protest against the policy or the possibility of officers of city or county coming up here and getting their salaries increased whenever they choose, or sending up here without any kind of approval or consent on behalf of the people who are to pay those salaries.

The question was then put on the amendment of Mr. Barker, and it was declared carried, on a division, by a vote of 40 to 37.

SEVERAL DELEGATES—There is no quorum present.

The CHAIRMAN—The Chair is of the opinion that there is a quorum present.

Mr. ALVORD—If the Chair is of the opinion that a quorum is present, the rule is invariably to call the roll to determine that question. The Chair has the right to determine that question.

Mr. E. BROOKS—As a point of order I insist there is no quorum present. Only forty voted in the affirmative and thirty-seven in the negative.

The question was put again on the amendment of Mr. Barker to reconsider, and it was declared carried, on a division, by a vote of 52 to 40.

The question then recurred on the amendment of Mr. Barnard to the amendment of Mr. Hadley, and it was declared carried, on a division, by a vote of 41 to 40.

The CHAIRMAN announced the pending question to be on the amendment of Mr. Barnard.

Mr. RATHBUN—I rise to a point of order, that the amendment is not germane to the subject under consideration. This article under consideration is in regard to county and town officers. The proposition now is in regard to debt, and is not germane to the subject at all. And I object

that it is improper, and ought not to be considered in this connection.

Mr. BARNARD—If we had the reports of all the committees here to see where it would come in there would be less embarrassment in offering it in some other place. When we come to the consideration of local debts I want to have the privilege of offering it. I would ask leave to withdraw it if there is any question about it.

Mr. BARKER—I wish to offer an amendment, to come in at the end of the first paragraph, as follows:

"Until the Legislature shall amend or repeal the laws conferring such jurisdiction."

It will then read as follows:

"The boards of supervisors shall possess exclusive power to regulate legislation and administration on subjects over which by general laws they have jurisdiction;" then the amendment follows. "until such laws shall be amended or repealed by the Legislature."

The effect of the provision is, without the amendment, to make all existing laws under which boards of supervisors do not act whatever constitutional acts, and I do not believe it would be wise to put it beyond the power of the Legislature to alter or amend those laws, while the next paragraph or the next provision in the section gives to the Legislature power, by general laws, to allow the boards of supervisors to legislate and to attend to administrative affairs. My proposition is to put the board of supervisors on the same basis as to existing laws and such as may be passed by the Legislature in the future.

The question was put on the amendment of Mr. Barker and it was carried, on a division, by a vote of 41 to 42.

Mr. HADLEY—I am opposed to that amendment for this reason—

Mr. SCHOONMAKER—I rise to a point of order. The vote has been taken, and it is not in order for a member now to speak on that subject.

Mr. HADLEY—There has been no vote taken, as there was no quorum voting.

The CHAIRMAN—The Chair is of opinion that the point of order is not well taken. The Committee of the Whole is not confined, as the Chair understands it, by technical rules which apply to the Convention. Such ruling as has been had heretofore, the Chair will abide by it.

Mr. HADLEY—It seems to me the effect of this proposed amendment of the gentleman from Chautauqua [Mr. Barker] is this, to put those various acts that the Legislatures have passed, giving the boards of supervisors power to legislate, into the Constitution, and keep them there until the Legislature, by amending or repealing them all, or some one of them, shall think fit to take them out. It seems a very queer constitutional provision. It may remain in the Constitution until the Legislature, at its next session, shall see fit to amend or alter any of those various laws which the proposition of the gentleman from Onondaga [Mr. Andrews] puts into the Constitution; and when they do the Legislature takes it out of the Constitution.

Mr. ANDREWS—As I understand the proposition as it stands, it gives to the Legislature power over the subjects upon which now, by virtue of

general laws, boards of supervisors can legislate, and it makes the jurisdiction over these subjects exclusive in the boards of supervisors. Now, I do not suppose that this would preclude the Legislature from the amendment of any laws by which that jurisdiction is now conferred. It would simply prevent the Legislature from withdrawing jurisdiction from boards of supervisors over those subjects, and while I shall be willing to approve of an amendment, to allow the Legislature to amend the acts relating to the subjects over which boards of supervisors, are to have exclusive jurisdiction, it still seems to me to destroy the entire force of the section if power is given to the Legislature to abrogate the jurisdiction itself, and while I shall favor an amendment, if it should be deemed necessary, which should put it into the power of the Legislature to amend the laws existing in respect to those subjects, if we are to retain the principle of exclusive jurisdiction at all, it would not do, as it seems to me, to put the power into the hands of the Legislature to destroy the jurisdiction itself.

Mr. BARKER—I wish to say one word. It seems to me the construction must be that the Legislature shall have no power reserved to it by which they can take away from the boards of supervisors the power which is now conferred upon them by any existing law, nor have any power whatever to increase it, and I ask the members of this committee if they wish to put into the Constitution an approval of every existing law from the year 1777 down to and including the year 1867. It makes each one of those laws that confers any power upon the boards of supervisors of this State a constitutional provision; and again I object to the language because it refers to so many scattered laws to ascertain what is the constitutional enactment and provision. No Constitution is perfect that refers to legislative enactments for its interpretation, and no wise body of men will adopt it. Let us state in the Constitution what the powers are, but not refer to ninety-nine volumes of the legislation of our State to ascertain what the constitutional provision means.

Mr. LANDON—I voted against the amendment before. If the gentleman from Chautauqua [Mr. Barker] will amend it by striking out the words "until the Legislature," and inserting the words "subject to the power of the Legislature to alter and amend," I will go with him.

Mr. BARKER—I accept the amendment.

Mr. E. A. BROWN—I would like to ask one question, what live man on this floor knows what constitutional provision we are making, if this provision is adopted? Who knows in what manner, to what extent, or upon what subject we are tying up the Legislature in regard to the powers of the board of supervisors? Who has examined the laws which are made a part of this Constitution by the provision which has been adopted. This amendment will leave the Legislature to inquire, and if we have done mischief it enables them to undo it. Otherwise I do not see but we have got, as the gentleman said, ninety-nine volumes, and I do not know but more, and gentlemen will have to refer to the session laws, to examine and see what powers are given to the

board of supervisors, and thus ascertain what Constitution we have made on that subject. Because instead of stating in distinct language, what provision we are making on the subject, we are adopting everything that has been legislated on the subject, and making, approving and putting into the Constitution all the powers that have heretofore in the ninety years of this State government, been transferred to the board of supervisors. We will want a larger Manual than we have to contain the Constitution when it is made.

Mr. CONGER—I would like to inquire of the gentleman from Chautauqua [Mr. Barker] whether he would be willing to strike out of his amendment the word "repeal." The object sought by this provision is to confer on the boards of supervisors exclusive power in certain cases. Now, I can easily understand, from what has been said, that it might be necessary that the Legislature should amend some of the provisions of law, which have already been passed; but to confer upon the Legislature the power to repeal any one of these laws would give the Legislature power to take away from the board of supervisors the exclusive power which we design to grant. It seems to me if we strike out the word "repeal" the Legislature could not, under the mere pretense of amending, strike at the power which we seek to grant.

Mr. BERGEN—I have listened patiently to this discussion, which has been going on for some time in the committee, in relation to the powers of the board of supervisors. I recollect very well in 1846 complaint was then made in relation to the vast number of local laws that were passed by the Legislature by what was called the log-rolling process, and without due consideration. That Convention, as I understand it, desired to put an end to that process and to prevent the passing of local laws, and for that purpose they provided that general laws should be passed, supposing that would effect the desired end. In my judgment they made a mistake, and I think time has shown it. They should have required general laws and in express language forbid special laws. In that case I believe they would have effected the object they had in view. I think if this Convention requires the Legislature to pass general laws in all cases where it is possible to pass general laws—and those cases will cover almost everything which they find in our session laws—if they require that, and in express terms forbid the passage of special laws, in my judgment there will be little left for the board of supervisors to transact in the law-making line. With provisions of that kind in the Constitution, in my judgment we may leave the board of supervisors subject to the provision of the Constitution of 1846 authorizing the Legislature to grant powers to them for local purposes and repeal them and change them whenever they desire to do so. In that case there would be very little left to be done. The idea of specifying in the Constitution, as has been advocated by gentlemen, all the local powers to be vested in the boards of supervisors, without knowing what they are, ought not to be entertained. I, therefore, am in favor, as I have stated, of requiring general laws and forbidding special laws.

Mr. KRUM—I would like to inquire of the gentleman from Chautauqua [Mr. Barker] how the amendment he proposes remedies the difficulty that he himself suggests? If the amendment offered by him is adopted, then all the laws now upon the statute book conferring upon the boards of supervisors local powers become a part of the Constitution of the State of New York, and we will have to rummage all the musty volumes to ascertain what the Constitution of the State of New York upon this subject is; just as much with the amendment which he has offered, as we will if that is not introduced. The only effect of that, amendment is to authorize the Legislature to amend or repeal the local laws which this amendment establishes as a part of the Constitution of the State of New York, so that the difficulty is not remedied. All the laws are parts of the Constitution, and to determine what the Constitution of the State of New York is, we must rummage and roam through all these volumes. It seems to me this discussion has elicited sufficient information to induce this Convention to act wisely in this matter, and to leave the whole thing, as it has been left heretofore, to the Legislature of the State of New York.

The question was then put on the amendment of Mr. Barker, and it was declared carried, on a division, by a vote of 48 to 45.

Mr. GRANT—I offer an amendment.

The SECRETARY proceeded to read the amendment, as follows:

Add to the end of the section:

But boards of supervisors shall not enact laws upon the following subjects:

First. Proceedings for laying out, opening or discontinuing public or private roads.

Second. Regulating the taking or killing of birds, wild animals or fish, or the preservation of such birds, animals or fish.

Mr. GRANT—When the Convention of 1846 adopted section seventeen of article three, they began to drift away from the landmarks and safeguards of legislation. The first provision of the Legislature under that section was the act of 1849, which gave boards of supervisors power among other things, to enact laws to govern the taking and preservation of fish, birds, and wild animals. By that same act all laws that had been previously enacted on this subject, and which were then found upon our statute books, were repealed. Immediately following the act of 1849, sir, we find the board of supervisors in every county enacting its own system of game laws. In 1857, the Legislature passed an act for the preservation of fish. In 1858 the Legislature passed another act on the same subject. In 1859 the Legislature passed three different acts for the preservation of fish. By reference to the session laws of 1860 we find that the Legislature passed seven different acts providing for the preservation of animals and fish in that single year. Turn to 1861, and we find the Legislature passed two different acts on the same subject in that year. Now, sir, during this same period we have had independent legislation going on on this very identical subject by boards of supervisors in almost every county of the State. We come down to 1862, and the Legislature, by a single sweeping enactment, swept

away all the acts of the Legislature upon these subjects, but left concurrent power in boards of supervisors to pass laws in each county, and also left the thousand different and often conflicting enactments on this same subject undisturbed. The Legislature, in the same year, enacted another system of game laws, with stringent provisions, for the preservation of fish, birds and harmless animals. We have upon our statute book that same general and stringent set of laws to-day. We also have in the different counties of this State as many different sets of laws as we have different counties, upon this very same subject. We have the boards of supervisors enacting their laws by constitutional authority, derived from this seventeenth section and the act of 1849, and we have the Legislature of the State enacting laws upon the same subject by general, unrestricted, constitutional authority. When these county and State laws differ and conflict with each other, who is to determine which law shall be paramount? Sir, a law which is enacted by a board of supervisors comes before us supported by authority, originating in the Constitution, the same as that law which was passed by both branches of the Legislature in this capitol and approved by the Governor of the State. Again, sir, we find in existence in this State a series of enactments in the different counties, differing and in positive conflict with each other, and as I said this morning, within an area of a few miles, near the corners of counties and sometimes on a single farm, we have from two to four different sets of county laws enacted by these county legislatures, without any guards against hasty or inconsiderate legislation, the whole of them overriding and nullifying legislative enactments passed by the Legislature and approved by the wisdom of the Governor. Yet each and every one of these county legislatures rest their power to act in this seventeenth section, which I regard as the most unfortunate section that has yet been incorporated into the Constitution of New York. Now, sir, the farther we go in this matter the farther we shall sooner or later find ourselves outside the true boundary of legislation. The legislative enactment of 1849 which provided that boards of supervisors might enact laws for the preservation of fish and game, was also an unfortunate provision. Fish and game existed throughout the entire State. They could not be circumscribed nor confined by county lines. Consequently the subject of their preservation was not a matter of local legislation. I hear gentlemen upon this floor propose by their amendments, and advocate in their speeches that boards of supervisors shall be vested with the legislative power of the whole matter of laying out, opening and discontinuing roads. The rights and interests both of the public and of individuals in, as well as the rules that should govern the laying out, opening and discontinuance of roads, are not matters of local legislation, but they are substantially the same in every town and county of the State. Thousands of these roads cross county lines. They have no immediate dependence upon such lines. They are matters of general interest and general legislation, and should be the subjects of general laws, uniform throughout the State. I offer this amendment, intending to provide that,

if this Convention are determined to create sixty legislatures in this State, with general legislative powers upon matters of local legislation, without any definition as to what shall be considered local and what shall be considered general legislation, that at least these subjects shall be excepted from the evils of this uncertain and dangerous system.

The question was put on the amendment of Mr. Grant and it was declared lost.

Mr. SPENCER—I move by way of amendment to strike out the entire sixth section as amended.

The CHAIRMAN—The Chair decides that the motion is not now in order. The province of this committee is to perfect the section as far as possible, and when that cannot be done the gentleman then can make his motion.

Mr. KRUM—I offer the following amendment:

Substitute for section six the following: "The Legislature may confer upon the boards of supervisors of the several counties of the State such further powers of local legislation and administration as they shall from time to time prescribe."

If in order I would suggest to the committee that this is section seventeen of article four of the present Constitution.

Mr. E. BROOKS—As a question of order I submit that that very proposition was rejected this morning by the committee, and is therefore not now in order.

The CHAIRMAN—The Chair is of opinion that the point of order is not well taken. If the Chair recollects right the proposition was withdrawn.

Mr. WICKHAM—I hope that the substitute that has been offered by the gentleman from Schoharie [Mr. Krum] will prevail. I think there are very great objections to the amendment which was offered by the gentleman from Onondaga [Mr. Andrews]. Before we adopt that amendment, for which this is a substitute, I think it is important we should understand what powers of legislation were devolved upon the boards of supervisors of the respective counties under this provision of the Constitution of 1846. Under this section, which is contained in the Constitution of 1846, the Legislature, as stated by the gentleman from Delaware [Mr. Grant], passed a law authorizing boards of supervisors to do certain acts. The section conferring this power contains some thirteen subdivisions, twelve of which relate to matters of administration. The thirteenth subdivision is as follows:

"They shall have power to make such laws and regulations as they may deem necessary, and provide for the enforcement of the same, for the destruction of wild beasts, thistles and other noxious weeds, and to prevent injury to, and destruction of sheep by dogs, and to levy and enforce the collection of any tax on dogs, and to direct the application of any such tax, and to provide for the protection of all kinds of game, and all shell and other fish, within the waters of their respective counties etc."

Under that provision there has been legislation by the several boards of supervisors; but I imagine that not one board of supervisors in the whole State passed any act of legislation in relation to dogs, or enforcing any tax upon dogs, or to prevent their killing or destroying sheep. I think it becomes those gentlemen of this Convention who

are farmers, or who represent constituents who are engaged in that occupation to look well to a constitutional provision declaring that this whole subject shall be left to the board of supervisors. I apprehend not one board of supervisors in this State will ever pass any provision, having regard to the protection of sheep from dogs. Now, in the county of Suffolk, in which I reside, there are some few deer still remaining in wild parts of that county, and our board of supervisors passed laws protecting that species of game. They were not stringent enough, or they were not deemed sufficiently stringent to satisfy the people of the State. Gentlemen of the city of New York, men who were fond of sporting, and who were accustomed to come down to Long Island to engage in this sport, became satisfied that for the protection of this game more stringent enactments were required, and they came up here and the Legislature passed laws, conflicting entirely with the laws which were passed by the board of supervisors of that county. I apprehend the same thing has occurred throughout the State. The laws which have been passed by the Legislature on the subject of game, and preservation of birds, is in general operation throughout the State. And I apprehend it is for the reason that the boards of supervisors in the respective counties have failed to pass laws sufficient for those purposes. I have not any special interest in relation to this matter, as I am not a sportsman. I take very little interest in the preservation of game, but I hope gentlemen will think well before they engraft a provision into our organic law, conferring exclusive legislation upon these subjects to the board of supervisors, which cannot be withdrawn however inefficient it may prove to be, without an amendment of the Constitution.

Mr. HARRIS—I hope the proposition of the gentleman from Schoharie [Mr. Krum] will prevail. If I understand it—I am not sure that I do—but if I understand the propositions adopted by this committee, they amount to just exactly what is contained in the proposition of the gentleman from Schoharie [Mr. Krum]. The amendment proposed by the gentleman from Onondaga [Mr. Andrews] confers upon the board of supervisors the same powers that that board now possesses, and as the amendment was proposed by the gentleman from Onondaga [Mr. Andrews] the power conferred upon the board of supervisors was absolute and irrevocable. Now, as that proposition has been changed by the amendment proposed by the gentleman from Chautauqua [Mr. Barker] it authorizes the Legislature to revoke the powers possessed by the board of supervisors. We stand, then, precisely as we did before the amendment of the gentleman from Onondaga was adopted. The Legislature may withdraw from the board of supervisors all the power it now possesses. So much for one branch of the amendment proposed by the gentleman from Onondaga [Mr. Andrews]. His amendment contemplates another thing. It authorizes the Legislature to increase the powers of the boards of supervisors. That is all. Now this proposition of the gentleman from Schoharie [Mr. Krum] embraces both. It continues in force the provision of the Constitution of 1846, and

that is all that we have accomplished by our labors in regard to those amendments. Now, sir, if this Convention entertain such views we had better fall back upon the proposition as it is contained in the Constitution of 1846. That is clear and specific, and we shall understand what it means; and if I am not entirely mistaken we have nothing more in the proposition which we have adopted to-day. I have watched this debate with considerable interest, though I have taken no part in it. I did not feel that I could accomplish anything by doing so. I believe myself it would be more wise to confer on boards of supervisors the power to legislate in relation to local affairs. I believe the committee whose report we are now considering have in their seventh section provided the fair and proper disposition of this question. I have looked at it with some attention, and I think it embraces the powers which should be conferred upon the board of supervisors. The section contains eleven classes of cases, each one of which I think the board of supervisors is more competent to deal with than the Legislature. That is my judgment. At the the same time I would not confer absolute and irrevocable power to legislate upon all those subjects to the board of supervisors. I would give the Legislature some discretionary power in the matter. It should have authority to modify or change the powers of the board of supervisors in relation to these subjects. It would be wise to do so. I think this power is provided by the committee in the last clause of their seventh section. It might, perhaps, be made more clear. Sir, in respect to this subject generally, allow me to say, before I take my seat, that I think that the Convention is called upon to do something in relation to the legislation of this State. I do not pretend to say, indeed I do not believe, that the Legislature is as corrupt as it has been represented on this floor; but all will agree that in the legislation of this State there is certainly a very unhealthy condition of things; and it has been said, and I believe it, that this state of things is owing very much to the local legislation which is thrown into the Legislature. We have two or three volumes of statute laws, containing over two thousand six hundred pages of laws, which were enacted at the last session of the Legislature, and if you look at the statute laws of the last year lying on the tables of members, you will find they contain two thousand one hundred and fifty pages of laws. Now, many of these relate to subjects of local legislation which would be embraced in some of the eleven classes of cases which are found in the seventh section as reported by the committee. Sir, in my judgment we should relieve the Legislature of much of the odium cast upon it. If we were to send those eleven classes of cases to the board of supervisors for their management, and then if we were also to provide that there should be no special acts of incorporation, it seems to me we bring about a more healthy and desirable condition of things under our State legislation. Without that we shall accomplish nothing in this direction; and it is better for us to be frank and candid, and adopt this simple provision contained in the Constitution of 1846.

Mr. ALVORD—It strikes me there is an essential difference in the proposition as it now stands with the amendment of the gentleman from Chautauqua [Mr. Barker], as compared with the proposition now made by the gentleman from Schoharie [Mr. Krum], as I understand it. While the power rests in the board of supervisors, they have the exclusive jurisdiction over the matter, and they have not a jurisdiction concurrent to the action of the Legislature. There is the difference between the proposition of the gentleman from Schoharie [Mr. Krum], and the proposition now amended by the gentleman from Chautauqua [Mr. Barker]. But, sir, I believe I truly represent the sentiments of the people of the State. One of the great influences which has borne upon the public mind, has been the necessity of relieving the Legislature from a large amount of this local business, which has been heretofore in the hall of legislation in this city; and my immediate constituents, without any reference to party, are very largely in favor of some arrangement by means of which this local legislation shall be taken from under the purview of the Legislature, and sent to the local boards of supervisors. I trust, therefore, that instead of clinging to the provisions of the Constitution as it now exists, gentlemen will not be satisfied until they perfect in some way a measure of relief in this direction. I have no anxiety regarding the particular proposition made by my colleague [Mr. Andrews], neither has he, as I understand it. I am entirely willing that so far as it regards the particular things which may be acted upon by the boards of supervisors exclusively; that they shall be specified within the body of the amendment to the Constitution. But I do not believe, in the light of experience of the last twenty years, that we can safely intrust to the Legislature of this State the power and the right to exercise that power as they may please, of devolving this duty upon the boards of supervisors, they themselves holding concurrent jurisdiction in the matter. I never knew a body in my whole experience, I never have read of a body, that had power delegated to it, power within its control, that ever released its grasp one single inch from that power. They hold it, and hold it with the tenacity of a death-grip before they will give it up, and if you leave to the Legislature of this State the power for themselves to decide whether or not they will give a portion of that power which rests in their body to another body, you may go on and enact Constitutions every twenty years of the lifetime of this nation, and they will give no power out of their grasp unless they hold alongside of the body to which they give it concurrent and overpowering jurisdiction. I trust, therefore, the amendment of the gentleman from Schoharie [Mr. Krum] will not prevail.

Mr. McDONALD—I understand from what the gentleman from Schoharie [Mr. Krum] said, that the amendment now offered is to section six. I had thought it was section seven, and I ask the clerk what the fact is.

The CHAIRMAN—The Chair will inform the gentleman that section six is under consideration.

Mr. McDONALD—Has there been any action

with regard to section six? Has it been stricken out at all.

The CHAIRMAN—It is the pending question.

Mr. McDONALD—It seems to me that with regard to the action of this committee, whatever amendment we are offering now may be premature on the part of those who really believe that legislation on special, local subjects, should be granted to the boards of supervisors, and the form of this section makes very little difference to those who have that belief and intend to enforce it in a practical manner. When we come to section seven we will then come to a portion which is recommended by the committee, and which, as has been stated by various members on this floor, has been duly and carefully considered by said committee, in my judgment, except as to its general provisions. Its special grants of exclusive jurisdiction should be supported by all those who really believe and intend to enforce the doctrine that local legislation should be granted to the boards of supervisors. There is in that section certain general provisions to which the gentleman from New York [Mr. Evarts] made a good objection, to wit; that it there provides that all local and internal affairs shall be granted to the boards of supervisors. That clause being in the Constitution, if the Legislature should provide with regard to a certain matter, and the board of supervisors should also provide with regard to the same matter, both claiming jurisdiction, the question would have to be decided by the courts whether the subject-matter was local or was not; whether it was within the jurisdiction of the board of supervisors under the Constitution, or within the jurisdiction of the Legislature. That difficulty is very apparent, and would be a source of great litigation, and therefore I am in favor of striking out, when we come to it, all such general words, and particularizing, as is afterward done, the particular matters to which and over which jurisdiction is granted to the board of supervisors. As between the propositions now pending, it does seem to me there is no distinctive difference, no actual difference. The one simply gives to the Legislature the power of depriving themselves of jurisdiction, which, as the gentleman from Onondaga [Mr. Alvord] has shown, it never will do, provided it is exclusive; and the other provides that the supervisors shall have certain jurisdiction until the Legislature see fit to take it away; and when they take it away they themselves acquire it, so that the Legislature still have it in their power to deprive the boards of supervisors of all jurisdiction. To that I am opposed. Whatever we give to the board of supervisors let us give it to them in that form or condition that it will be certainly fixed and exclusive, and thus fixed in the Constitution so that no Legislature, however much they desire to, shall ever take it away again.

Mr. DALY—I agree with the gentleman from Albany [Mr. Harris] that the amendment proposed by the gentleman from Schoharie [Mr. Krum] and that offered by the gentleman from Onondaga [Mr. Andrews] amount to the same thing, and were it possible now to offer an amendment to carry out the views of the gentle-

man from Albany [Mr. Harris] I would do so by amending the seventh section. The difficulty, however, is that we have substituted the amendment of the gentleman from Onondaga [Mr. Andrews] for the sixth section; which, if adopted, would dispense with the seventh section. Had we power to act upon the seventh section it would be possible to carry out the views of the gentleman from Albany [Mr. Harris] by making an alteration at the end of that section, so that it would read to this effect: after enumerating the specific powers of the board of supervisors, line twenty-seven of that section, continue making certain erasures until the remainder of the section would read thus, "such other matters of a local and internal character as the Legislature may prescribe, or in regard to which the board of supervisors may have jurisdiction at the time of the adoption of this Constitution, subject to such changes and modifications as may be hereafter made by the law in accordance with this Constitution." As the section now stands, the power given to the Legislature to modify by changes applies only to the powers already possessed or powers—other than those expressed in the proposed Constitution—which may hereafter be granted. I simply desire to suggest that the wiser course in respect to the whole of this matter would be to vote against the proposed amendment of the gentleman from Scholharie [Mr. Krum], and to reconsider the amendment already passed, which, if it remains will, as I have said, dispense altogether with the seventh section. All the powers it enumerates are powers proper to confer upon the board of supervisors. My view is to amend that section in such a way as will specifically express in the Constitution the powers intended to be conferred, subject to such modifications and changes as may be hereafter made. I agree that there is great doubt of the propriety of engraving upon the Constitution an enumeration of the powers of the boards of supervisors, without any power to change them. I admit, also, what the gentleman from Onondaga [Mr. Alvord] has suggested, that the Legislature will not of itself give up powers once possessed. But when powers are specifically expressed in the Constitution, the words "changes and modifications," are words not of that comprehensive character which would justify the Legislature in sweeping the whole of these powers away. If we should take this course and reach the seventh section, I should then take the liberty of offering an amendment which will carry out the views expressed by the gentleman from Albany [Mr. Harris], on which I most heartily concur.

Mr. FOLGER—I wish to ask the gentleman from New York [Mr. Daly] if the seventh section should be adopted, would not the board of supervisors of the city and county of New York have a right to repeal every law constituting a commission which has been passed by the Legislature of the State of New York?

Mr. HARRIS—Will the gentleman allow me one moment?

Mr. FOLGER—I would like an answer to my question.

Mr. DALY—I believe it is contemplated by the committee having charge of that matter to abol-

ish the board of supervisors of the city of New York.

Mr. HARRIS—That is the fact.

Mr. DALY—That is the reason I made no allusion to that subject.

Mr. GARVIN—Mr. Chairman, I hope the board of supervisors in New York will not be abolished, substituting some other power in its place, and, in so doing, if that board must be abolished, you will confer their powers upon the mayor and board of aldermen and such as are possessed by the boards of supervisors of the different counties of the State, otherwise it would not be practicable to carry on the business necessary to be transacted in that city and county in her relations to the State, so that the question put by the gentleman from Ontario [Mr. Folger] is a very pertinent one; but I see no difficulty in answering it, nor any trouble to arise from it—if this particular section spoken of by the gentleman from Albany [Mr. Harris] and also by the gentleman from New York [Mr. Daly] is defective in its enumeration of, or in the kind of power conferred. It may be amended—some of these may now be struck out and others put in—so as to satisfy the Convention as to what peculiar powers these boards are to possess. I am wholly in favor of giving these boards, and any of the authorities who may be substituted for that body in the city of New York, exclusive power as to that sort of local legislation which this Convention mean to designate; but I am entirely opposed to conferring that jurisdiction in the general terms expressed in some portions of this section. Conferring powers without limitation in general terms upon boards of supervisors is unsafe. I desire those powers specified and enumerated in plain terms, so we may know what they are with certainty; and I would like at the end of that section to have the last clause of article three (in reference to the board of supervisors) in the Constitution of 1846 added thereto, which authorizes the Legislature to confer such further powers as may be necessary and are discovered by experience to be desirable. That is the kind of provision we ought to adopt. There is no other mode in which we can conveniently confer these powers, without enumerating or specifying what those particular powers are. It will give rise, as suggested by the gentleman from New York [Mr. Evarts], who spoke on this subject early in the day, to endless litigation, and there is no way in which we can arrive at a correct conclusion in reference to it. The seventh section is the best proposition that has been submitted to the Convention, upon which we can build; it is a good foundation to work on. I understand the embarrassments which surround the subject. We must either adopt the provisions of the old Constitution or we must enumerate the powers which are to be conferred upon them; and I am in favor decidedly of giving the board of supervisors exclusive jurisdiction of those subjects which we enumerate and provide for, and not leave it to the Legislature to retake and repossess themselves of it whenever they see fit. That opens wide the door to the objections that have

been urged so constantly against the action of the Legislature. Now, sir, in reference to the corruption that is talked about in the Legislature, I do not believe it, the great mass of the representatives of the people who come up here for the purpose of making laws are honest. There are a great many men who creep into bodies as large as our Legislature from time to time who may be corrupt, but the great mass of the representatives of the people are as honest as their constituents. We are not to make a Constitution on the supposition that everybody is dishonest, that all public officers are corrupt, that our lawyers, our farmers, our legislators, and our courts, and every member of Assembly and Senator is dishonest. I do not like to hear these kind of speeches, nor do I believe there is any justice in such views. Let us go on and make a Constitution and submit it to the people as sensible men, without reflecting upon this or that body of men, and let us vote more and talk less.

Mr. KINNEY—Mr. Chairman, I would like to call the attention of the gentleman who has just taken his seat to the conclusion of the eighth section, or near the conclusion, commencing with the twenty-seventh line, which I conceive covers the proposition which gentlemen are desirous of having attached to that section, and also covers the idea of the gentleman from Schoharie [Mr. Krum], which reads:

"Together with such other matters of a local and internal character as the Legislature may prescribe; and also all other matters in regard to which boards of supervisors may have jurisdiction at the time of the adoption of this Constitution, subject to such changes and modifications as may thereafter be made by law, in accordance with this Constitution."

Mr. GARVIN—That may cover the very proposition I suggest, but, as has already been said by gentlemen in this Convention, time and time again, I prefer to use the language we have had before us for the last twenty years, which has been interpreted by the courts and is well understood.

The CHAIRMAN—The gentleman is out of order; having spoken once already on this proposition.

Mr. SMITH—Mr. Chairman, I have listened patiently to the discussion of the various propositions and substitutes for the report under consideration, and perhaps the committee will indulge me for a brief time while I make a few suggestions in regard to the reasons which operated upon the minds of the committee in proposing this article for the consideration of the Convention. When we came to the consideration of the subject we found this provision in the present Constitution, which is now offered as a substitute by the gentleman from Schoharie [Mr. Krum], and which provides that the Legislature may confer upon the boards of supervisors of the several counties of the State, such further powers of local legislation and administration as they shall from time to time prescribe. This has been in existence twenty years, and the facts show that the Legislature have never, to any great extent, conferred powers of local legislation upon the

boards. No other evidence is needed to show the truth of what has been affirmed by gentlemen during this discussion, that the Legislature will not yield power which they possess, but will retain it in their own hands and exercise it. During the last twenty years this evil, of which so much complaint is made, has been constantly increasing, until it presses with great severity upon the Legislature and imperatively demands redress. The first question for the consideration of the committee was, shall there be a transfer of this local legislation from the Legislature to the boards, and shall it be made exclusive in the boards? This change seemed to be demanded by the Convention; there was a cry from every quarter against the great evil, whose existence all admit, and it was *supposed* by the committee that this meant something. They knew that the people complained of it and demanded a reform. They were not mistaken on this point. I have mingled with the people and taken considerable pains to ascertain public sentiment upon this question, and do not hesitate to affirm that, with the exception of the judiciary, there was no reform so imperatively demanded as the one which we are seeking to inaugurate by the introduction of these provisions. The purification of the elective franchise, and a thorough cleansing of the Legislature from its foul corruptions, were the two great reforms demanded by the people; and it is my firm conviction that if we should adjourn without making provisions that would promote, or at least promise to promote these reforms, the people would condemn our work, and reject with scorn the Constitution that we might present for their adoption. Believing, therefore, that it was necessary to transfer this power, and believing also that it was necessary to make it exclusive in the boards, the question arose how should that be done? It was thought desirable, if possible, to do it by general provisions, something, perhaps, like the amendment of the gentleman from Onondaga [Mr. Andrews]. The committee felt, as gentlemen have expressed here to-day, that it is desirable in the organic law to have general provisions, and not descend to details. But in attempting to make a provision of this kind, it was found exceedingly difficult to frame a section in general language that would so limit and mark the boundaries of jurisdiction and powers as to render it safe to confer so much additional power upon the boards. The very difficulties that have been suggested by the gentleman from New York [Mr. Evarts], and by other gentlemen here to-day, as objections to this provision met the committee, and it was finally decided that the only safe way to effect the object was by specifying the subjects upon which the boards might possess this power of legislation or administration.

Mr. DALY—Will the gentleman allow me to ask him a question, merely for information? Why did the committee, after having specified powers which already existed by the Revised Statutes, provide also for such powers as the board of supervisors also had, together with such other matters of a local and internal character as the Legislature might prescribe? Did they mean to distinguish between others than those they specified as

powers which the board of supervisors possess or may possess?

Mr. SMITH—If the gentleman will wait a moment I shall directly come to that subject, when I will make an explanation, and shall be happy to do so. I was about to say that in the opinion of the committee, the only safe method in this instance is, to depart from the general rule and specify the subjects over which boards shall have exclusive power. Section six, to which this amendment has been offered, was intended merely to provide for the organization of the board of supervisors in the county. It was not intended to prescribe their powers by this section, but simply to organize the boards. Section seven was designed to designate their powers, and it commences by saying that "the board of supervisors of each county, etc., shall, under such general regulations as may be prescribed by law, have exclusive legislative and administrative power over, and superintendence and control of, such local and internal affairs;" not *all* local affairs, but "such local and internal affairs and fiscal concerns within their county as are not otherwise provided for by this Constitution."

Mr. CLINTON—Will the gentleman allow me to ask him a question?

Mr. SMITH—If I don't lose my time.

The CHAIRMAN—The gentleman will lose his time.

Mr. SMITH—I would be very happy to extend the courtesy to the gentleman from Erie [Mr. Clinton], but I do not like to lose any of my time. I continue to read: "including the establishment, construction, regulation and discontinuance of roads, public landings, ferries and bridges, except over navigable streams;" and so on, enumerating the various classes of duties over which it was designed to give the boards jurisdiction. It was found, however, impracticable to enumerate all the classes of cases in regard to which it was thought desirable to give power to the boards; therefore this general language upon which I have been interrogated by the gentleman from New York [Mr. Daly] was added, with the view of covering subjects omitted in the enumeration, which it might hereafter be found desirable to turn over to the control of the local boards. The enumeration is followed by the general provision "together with such other matters of a local and internal character as the Legislature may prescribe." Subjects which ought to be included may be overlooked by the Convention, and some provision ought to be made for them.

Here the gavel fell, the gentleman's time having expired.

A DELEGATE—I hope the gentleman may be allowed to go on.

The CHAIRMAN—If there be no objection the gentleman from Fulton [Mr. Smith], will proceed.

Mr. SMITH—Then, after making this provision, there was still left a large class of cases which it was impracticable to enumerate in the Constitution, over which the boards now have power; and the last clause in this section was intended to cover that class of cases, and also all other matters, in regard to which boards of supervisors may have jurisdiction at the time of the adoption of this Constitution. It was not thought

desirable to incorporate in the Constitution all these local acts which run through a large number of our statutes and convert them into constitutional provisions, with no power in the Legislature to repeal or modify them, and hence the last clause of the section was inserted. But it seems to me that the suggestion of the gentleman from New York [Mr. Daly], in regard to the modification or amendment of that clause in this section may be proper; I can see no objection to it, and perhaps such an amendment would be wise. It seemed to the committee that this section, with such modifications as might be made to it, would meet the exigency. After a good deal of examination, both of statutes and Constitutions upon this subject, your committee were unable to devise a better mode of accomplishing the object sought. It seems to me that the question with us now is whether we shall attempt a reform in this regard, whether we shall meet the wishes and demands of the people, and transfer to local boards this local legislation, which presses with so much severity upon the Legislature and gives rise to so much corruption, whether we shall devolve this upon the local boards and leave it there to be disposed of at home. With the permission of the committee there is a suggestion or two which I wish to make in regard to the propriety of this provision, which seem in a measure to have been overlooked. Now, there are two difficulties arising from the great press of local legislation which devolves upon the Legislature. The one is that corrupt and improper schemes are wormed through the Legislature by a system of log-rolling and other corrupt means which are brought to bear; the other is that general legislation, which is the proper business of the Legislature, is pushed aside or passed hastily without proper regard for the interests of the people. If you transfer these local matters to local boards, you do not, it is true, entirely escape the dangers of corruption, but you greatly lessen the chances of it. In the first place, these local boards would have only local legislation to deal with; in the second place, they would be under the immediate eye of their constituents. The various communities interested in these local questions, and sensitive on the subject of taxation, would keep a watchful eye upon the boards; local questions would be discussed in every neighborhood and family, and it would be a very difficult thing to engineer corrupt schemes through boards of supervisors without exposure. It seems to me that by this measure we should make an advance toward purity in legislation, and in the administration of our local affairs. In regard to the particular way in which it should be done, your committee have no feeling, and would be glad to see a better plan than they have been able to devise. There is some danger, however, in attempting to incorporate into the Constitution all the laws that now exist upon our statute books. Under the Constitution of 1846, there was a law passed in 1849 giving some legislative powers to boards of supervisors, but the boards are very much restricted in the exercise of these powers, as has been suggested by one gentleman to-day, the gentleman from Lewis [Mr. E. A. Brown] I think. If you wish to change the site of your court-house,

you cannot remove it more than one mile, and there are various other matters in which these powers are greatly limited and restricted. If existing statute laws should be incorporated into the Constitution, the boards would be so tied up by these restrictions, that they could not exercise the powers and perform the duties which are absolutely necessary to the administration of local affairs. Now, if this general plan of giving power to the boards, and specifying it so that there may be no doubt about its extent and limitations, be adopted, with the amendments suggested by the gentleman from New York [Mr. Daly], and the gentleman from Albany [Mr. Harris], it seems to me that we shall have accomplished a great good.

Mr. CLINTON—Mr. Chairman, I am almost sorry I have the floor, but I rose some time ago to ask my friend from Fulton [Mr. Smith] a question, and I rise now more for that than for any other purpose; but being up, it is proper for me to say that so far as I have been able to form an opinion, from the debate and from the reasons given by the different members who have spoken upon this matter, I am satisfied that our true policy is, if we can do it, to define clearly the powers of local legislation which are to be committed to the boards of supervisors, and it is proper also, if it can be done, to reserve the power, not of modification merely, but the power of destruction by the Legislature of all the special powers exercised now by different boards of supervisors throughout the State. For instance, I understand that in Kings county, under a special law, there are powers vested touching the management of the poor which I do not understand, and yet which should be preserved—which should not be cut off. And yet the Legislature, which has time for investigations of this kind, and can look at local wants and local demands, should retain power to look at Kings county and see whether under the present state of the Constitution and the law those powers shall be any longer exercised by that board of supervisors. Now, I catch the idea which runs through this seventh section, but I confess, Mr. Chairman, I am terribly afraid of it, and probably simply for the reason that I do not understand the language; and it was with reference to the construction of portions of the language of this section that I rose, in order to ask my friend from Fulton [Mr. Smith] touching it. Now, take the very commencement of the report of the committee: "The board of supervisors shall, under such general regulations as may be prescribed by law." Under what regulations to be prescribed by law? Are those regulations to interfere with or trammel the powers that are immediately thereafter granted, or not? They shall, under these general regulations, "have exclusive legislative and administrative power over, and superintendence and control of"—what? "Such local and internal affairs and fiscal concerns within their county as are not otherwise provided for by this Constitution." Now I do not understand that. The only general thought which runs through my head is this; that it was intended to preserve the just rights of incorporated villages and cities which happen to form portions of counties, and I rose simply to ask that question of the gentle-

man from Fulton [Mr. Smith]. Now if that be so, and if that would be its effect, upon which I do not now presume to offer any opinion, then it follows that these just rights of incorporated villages and cities, forming parts of counties, are utterly destroyed beyond the possibility of the Legislature to revive and replace them in those corporations, unless by this Constitution you provide for and define them, and place them in cities and villages. Now, that is my impression. I may be wrong about it. I merely refer to this, Mr. Chairman, to show that I need light, in the hope that the gentlemen who shall conduct this debate further will enlighten me; but I do say, and say it with great confidence, we are situated thus: Here is the city of Buffalo, which forms a part of the county of Erie, and I am anxious to protect the right of my city. I have no doubt that the board of supervisors of Erie county are an improper body to legislate for the city of Buffalo in reference to many things, the power over which is apparently reposed entirely in the board of supervisors. For instance, "the establishment, construction, regulation and discontinuance of roads, public buildings, ferries and bridges, except over navigable streams;" and there are other items specified which I will not go through. It is not worth while for me, unprepared as I am, to debate this subject as it ought to be, to go through with it. Now, this section, apparently at the outset, vests in the board of supervisors, excepting only "such local and internal affairs and fiscal concerns within their county as are not otherwise provided"—I suppose provided for and invested elsewhere by this Constitution—it vests in them all control, without exception of the local and internal affairs within the county. Now, then, the question might come up whether the old maxim of law, *expressio unius est exclusio alterius*, really limits the general power conferred by the opening clause. It may possibly, but still there is a maxim of law that, although the opening language may be broad, very broad, apparently universal, yet when the powers are specified the very specification of them narrows the general language of the introduction. Now, how does that coincide really with the concluding portion of the section? After the enumeration of special powers, they are not only to have those powers, but also "together with such other matters of a local and internal character as the Legislature may prescribe." That is already granted at the outset, and without any power of interference by the Legislature. This perhaps amounts to a limitation of the powers conferred by the opening clause, but I do not really understand it. "And also all other matters in regard to which boards of supervisors may have jurisdiction at the time of the adoption of this Constitution." That, I suppose, is intended to reserve powers specially vested in particular boards. Now, all I can say, Mr. Chairman, is this: that my present impression is in favor of the seventh section, if we can make it clear and distinct beyond a peradventure; otherwise it appears to me that our better course is to throw this whole matter where it was when we commenced, and that is to return to the Constitution of 1846.

Mr. DUGANNE—I am in favor of and will vote

for the delegation of all powers to the supervisors that can be properly confided to them, for the purpose of relieving the Legislature and for the purpose of purifying the Legislature; but, sir, I still desire that there may be at some time, if this plan shall be found to work injuriously, an opportunity offered to the people through their Legislature, to reclaim the whole or a portion of the powers intrusted to local bodies. And I propose, therefore, when the opportunity is offered to me, to submit a proposition, which I now state in my place as a part of my remarks:

"All ordinances not embraced in general laws which may from time to time be adopted by the board of supervisors of a county for the regulation of its internal affairs, as herein provided, shall be final in their operation until five years after the adoption of this Constitution, and thereafter unless prohibited or restricted by the Legislature."

I wish, sir, to try this, plan, that has been called an experiment, for five years, or for any number of years which the Convention may designate, and then, if the plan shall not work well, allow the Legislature to re-enter upon its jurisdiction and regulate the affairs of the towns and counties. I am in favor, sir, of general laws, and general laws only, to be passed by the Legislature; but I am also in favor, because I deem it a necessity, that at certain times, at proper times, the Legislature should have power to return to its original and supreme jurisdiction over every local interest in the State. And, sir, in regard to these general laws, I hope to be able, if it is not offered by any other gentleman, to propose hereafter an amendment providing for general laws applicable to the cities of the State, and which shall regulate those cities as municipalities. It will not interfere with anything we shall enact in this section or this article, and it is certainly proper that general laws should apply to cities as well as to towns and counties. I shall, also, when an opportunity is offered, submit the amendment that I have just read, in order that gentlemen may know what sort of restriction, and what sort only, I would impose upon the local boards.

The question was then put upon the amendment of Mr. Krum, and it was declared lost, on a division, by a vote of 32 to 57.

Mr. CONGER—I offer an amendment

The SECRETARY proceeded to read the amendment as follows:

"The Legislature may confer upon boards of supervisors of the several districts of the State such further powers of local legislation and administration as they shall from time to time prescribe, but such powers so conferred shall be exclusively exercised by such boards."

Mr. CONGER—Mr. Chairman, in order to correct an evil which is admitted, it is the part of wisdom to undertake, in the first instance, to ascertain precisely the causes which lead to the evil. Gentlemen seem to suppose, on the floor to-night, that all this evil exists in the Legislature, which is spoken of as a body given to rapacity of power, and unwilling to yield any power which they may by any pretense claim under the Constitution. Now, I apprehend, sir, that to any person familiar

with legislation as it progresses in this State, from year to year, it cannot be made apparent that such is the purpose or will of the Legislature. On the contrary, the difficulty is always with those who are applicants for some special privilege or some special charter. We have general laws authorizing corporations to be formed for different specific purposes; we have general laws authorizing the establishment of school-districts in villages, with certain powers conferred; we have also certain general laws authorizing the supervisors in counties to do certain specific things in localities; but when you come to legislation as it actually exists, you find always a large crowd of persons beseeching the Legislature, who desire special charters for corporations, special charters for village schools or school-districts, and special rights or special laws to be passed authorizing some road district to be created, or some matter of purely local concern to be enacted into a law by the Legislature, and all these persons seek to gain what they consider to be the great advantage of a special charter. Now, how is the Legislature to resist all these importunities? Gentlemen have said that under the constitutional provision which has been cited here to-night, and which is part of the amendment that I offer, the Legislature could have denied these applications. So it might, but there was no inhibition in the Constitution against the Legislature conferring the special rights sought in localities, and as against the power theretofore vested in boards of supervisors. Now, then, it seems to me the proper remedy to be applied is simply this, that letting the old constitutional provision stand as it is, you debar the Legislature from exercising concurrent power with the boards of supervisors, and give exclusive jurisdiction in these cases to the boards of supervisors for the time being. Now, it may seem, and doubtless it will be objected to by the honorable gentleman from Chautauqua [Mr. Barker], that this is aiming precisely at the same result he sought to accomplish by his amendment, but the manner in which the object is sought to be accomplished is different, and less liable in my judgment to exception, because the question is not raised here as it was raised before, whether the Legislature should have the power to repeal or amend any existing statute conferring general power; that is left as a question of law, where it must necessarily stand in the interpretation of the organic law. I hope by this amendment—

Mr. GRAVES—I rise to a question of order. The sixth section has been the subject of discussion here to-day, and the substitutes that have been offered under the sixth section. That section relates only to the organization of the boards of supervisors without reference to their powers, while the discussion now is upon their powers.

The CHAIRMAN—The Chair is of opinion that the point of order is not well taken. The committee have the matter in their own hands, and can discuss it as they please.

Mr. GRAVES—Am I not correct in stating that the amendments which have been offered, have been offered to the sixth section, and no other?

The CHAIRMAN—The Chair is unable in all instances to say exactly how an amendment will apply. It is for the committee to offer such amendments, and adopt such as they see fit. The Chair is of the opinion that the point of order is not well taken. The gentleman from Rockland [Mr. Conger] will proceed.

Mr. CONGER—I will conclude very briefly. My design was to show exactly the nature of the evil we seek to remedy, which is in the exercise of concurrent jurisdiction by the Legislature and the boards of supervisors over the same subject-matter, and if the language which I have sought to add to the constitutional provision of 1846 is to be fairly interpreted I think the amendment will meet all the difficulties of the case.

Mr. E. A. BROWN—I ask if the proposed amendment is a substitute for the whole sixth section.

The CHAIRMAN—The Chair so understands it. The question then put on the amendment of Mr. Conger, and it was declared lost.

Mr. SPENCER—Mr. Chairman, I now move to reconsider the vote by which the amendment of the gentleman from Onondaga [Mr. Andrews] was adopted. I have made this motion for the purpose of calling the attention of the committee to the fact that we are attempting to confer a power upon a body which has no constitutional existence. The board of supervisors is a mere creature of statutes, and the same power which creates can destroy. There is no provision in the Constitution, I believe, and it is not certain that there will be, by which a board of supervisors will be authorized or created. The amendment of the gentleman from Onondaga [Mr. Andrews] supersedes a provision of that kind. The section reported by the committee authorizes a board of supervisors, and by the adoption of that provision we have created a body upon which we can confer powers without the possibility of their being taken away by the abolition of the body itself. We have stricken out one or more sections of this article, as reported by the committee, authorizing such an officer as a supervisor of the town, so there is no constitutional authority for a supervisor of a town. He is a mere creature of statute, and his office may be ended at any time by the authority of the Legislature. I seem to me proper, and I think the committee will concur with me, that if we are to confer authority upon any officer or upon any board of officers, or upon any body, that that officer or that board shall be provided for in the Constitution, so that it will not be within the power of the Legislature at any time to put an end to the powers that are conferred by putting an end to the body upon which they are conferred, for that may be precisely the case in which we shall be left if we retain the amendment of the gentleman from Onondaga [Mr. Andrews] without making some further provision for the constitutional existence of the body upon which the power is to be conferred.

Mr. ANDREWS—I will detain the Convention but a moment for the purpose simply of dissenting from the views of the gentleman who last addressed the committee as to the effect of naming the board of supervisors in the Constitution, without affirmatively establishing that board by some

direct constitutional enactment. Now, sir, in 1846, that Constitution provided that the Legislature might confer upon the boards of supervisors of the several counties of the State various powers. It provided for the fixing of the compensation of certain judicial officers by the board of supervisors, and nowhere in the Constitution itself was there an affirmative declaration establishing the existence of that body, and, as I understand it, it is entirely well settled, and has been adjudicated in a case which has arisen under this Constitution, that the naming of a judicial officer in the Constitution amounted to an affirmative recognition and creation of such officer. Such I have no doubt is the law of the case; and I think the gentleman from Steuben [Mr. Spencer] is mistaken in the view he has taken upon this subject.

Mr. LAPHAM—I am in favor of the motion to reconsider for this reason: The amendment which the gentleman from Onondaga [Mr. Andrews] has offered to section 6 is inappropriate to that section. The best way to get rid of all this difficulty is the one suggested by the gentleman from New York [Mr. Daly] to vote down all these propositions by way of amendment to section 6, and when section 7 is taken up we can then, by appropriate amendment, to that section embody the views of the committee as to what power shall be conferred upon the board.

Mr. ALVORD—Let me suggest to the gentleman from Ontario [Mr. Lapham] that we can put what is desired into this section, making it the sixth section, and we can then strike out section 7 entirely. I hope the motion of the gentleman from Steuben [Mr. Spencer] will not prevail.

The question was then put on the motion to reconsider, and it was declared carried, on a division, by a vote of 50 to 38.

Mr. KERNAN—Is it in order to offer an amendment by way of substitute to section 6 and the amendment thereto proposed by the gentleman from Onondaga [Mr. Andrews]?

The CHAIRMAN—The Chair is of opinion that it is.

Mr. C. C. DWIGHT—I rise to a question of order. The question is now upon the amendment proposed by the gentleman from Onondaga [Mr. Andrews], to the amendment of the gentleman from Seneca [Mr. Hadley], the adoption of which has just been reconsidered.

The CHAIRMAN—The point of order is well taken.

Mr. SHERMAN—Is not that amendment open to amendment?

The CHAIRMAN—The Chair is of the opinion that it is not. It is an amendment to the amendment of the gentleman from Onondaga [Mr. Andrews], which was offered as an amendment to the amendment offered by the gentleman from Seneca [Mr. Hadley]. There are two amendments pending.

Mr. SCHOONMAKER—I call for the reading of the amendment of the gentleman from Seneca [Mr. Hadley].

The SECRETARY proceeded to read the amendment of Mr. Hadley as follows:

"There shall be in each of the counties of this State (except the city and county of New York) a

board of supervisors elected in such manner and for such period, and composed of such numbers as is or may be provided by law. The board of supervisors shall possess and exercise the power to legislate in relation to local and internal affairs of their respective counties, and the towns and villages therein, subject however to such rules and regulations as the Legislature may prescribe, and it shall be the duty of the Legislature on the first session thereof, after the adoption of this Constitution, to prescribe such rules and regulations by general laws."

The SECRETARY also read the substitute of Mr. Andrews, offered as an amendment to the amendment of Mr. Hadley, as follows:

"The board of supervisors of each county in the State shall possess exclusive power of local legislation and administration upon subjects over which, by general laws, they now have jurisdiction. The Legislature shall have power, from time to time, by general laws, to enlarge the power of boards of supervisors over subjects of local legislation and administration, and the internal affairs of their respective counties, and of the towns thereof. When additional power of legislation and administration shall be conferred by the Legislature, as herein provided, such power shall be exclusive until the law conferring it shall be repealed."

Mr. BARKER—I offered an amendment to the amendment of the gentleman from Onondaga [Mr. Andrews], which was adopted as a part of his amendment.

Mr. ALVORD—It strikes me there is no difficulty in this whole matter. The proposition of the gentleman from Onondaga [Mr. Andrews] was first adopted, and it then became susceptible of amendment, and it was amended on the motion of the gentleman from Chautauqua [Mr. Barker]. Now that forms a part of the proposition of the gentleman from Onondaga [Mr. Andrews], which has been reconsidered, and it should be read as a part of it.

Mr. TAPPEN—I move that the committee do now rise, report progress and ask leave to sit again. We will come in the morning feeling better, and do business much better.

SEVERAL DELEGATES—No! No!

The question was put on the motion of Mr. Tappen, and it was declared lost.

The SECRETARY proceeded to read the amendment of Mr. Barker to the amendment of Mr. Andrews, as follows:

Add at the end of the first paragraph of the amendment of Mr. Andrews as follows:

"Subject to the power of the Legislature to alter, repeal or modify the same."

The SECRETARY also read the amendment of Mr. Barnard to the amendment of Mr. Andrews, as follows:

Add to the section:

"The salary or compensation of any officer payable out of the treasury of any county shall not be increased or diminished during his continuance in office, without the assent of a majority of the members elected to the board of supervisors of such county."

The question was then put on the amendment of Mr. Andrews, as amended by the amendments

of Mr. Barker and Mr. Barnard, and it was declared lost.

Mr. KERNAN—If an amendment is in order, with a view to get at what a great many gentlemen have desired, I will offer an amendment by way of a substitute to the sixth section, which I will state is the seventh section changed to meet the views of various gentlemen.

The SECRETARY proceeded to read the amendment, as follows:

SEC. 7. The board of supervisors of each county, a majority of whom shall constitute a quorum, shall, under such general regulations as may be prescribed by law, have exclusive power over and superintendence and control of the establishment, construction, regulation and discontinuance of roads, public landings, ferries and bridges, except over navigable streams; the raising of money by loan or tax for town or county purposes; the confirmation of the proceedings of towns; the purchase, management and sale of real estate and personal property for the use and benefit of the county; the erection of new towns and the changing the names thereof, and the alteration of town boundaries; the widening, deepening, straightening and cleaning of the channels of streams (except navigable streams), and the drainage of swamps and marshes; the correction of erroneous and illegal assessments and refunding of moneys collected or paid on such assessments, the compensation of town and county officers, except supervisors, which shall be fixed by the Legislature; the care and support of town and county poor.

Mr. KERNAN—It will be observed by the committee that this gives exclusive power under general regulations of the Legislature over certain subjects, being only a part of those named in section 7, as reported by the committee, and then it also, in the language of the Constitution of 1846, authorizes the Legislature to confer further powers on the board of supervisors, but by general laws. It seems to me that the committee, if I understand the views of gentlemen who have spoken, desire to take this seventh section and modify it to meet the views of the majority, and thus let it stand as a substitute for the sixth and seventh sections in the report of the committee, and I offer it with a view of submitting it to the committee in the form presented, so that if it meets their views it may be adopted in that form, and if it does not they may perfect it, and thus be able to act upon what seems to be the desire of the committee, and then the sixth and seventh sections will be stricken out.

Mr. SMITH—Will the gentleman have the kindness to specify those matters which are there omitted?

Mr. KERNAN—I will have to ask the Secretary to read the amendment, as I have sent it up, and each gentleman will look over his printed report and mark it.

Mr. SEAVER—Will the gentleman from Oneida [Mr. Kernan] permit me to ask him a question? I would inquire of him what sort of a fee bill he would have for justices of the peace and constables if their compensation is left to the different boards of supervisors throughout the State?

Mr. KERNAN—The word used by the committee is "compensation," and I suppose it does not mean the fees of judicial officers.

Mr. GREELEY—I desire the Secretary to read what the gentleman has left out of the section.

The SECRETARY again read the amendment.

Mr. LEE—The committee have worked pretty well this evening, for they have undone nearly all they have accomplished during the day and evening, and have now struck a new text, and I move that the committee do now rise, report progress, and take up the subject in the morning.

The question was then put on the motion of Mr. Lee, and it was declared lost.

Mr. FOLGER—I ask the gentleman from Oneida [Mr. Kernan] whether he means to leave out the words "within their county," in the sixth line?

Mr. KERNAN—Yes. That seems, in the report of the committee, to refer to fiscal affairs.

Mr. ANDREWS—I would like to ask the gentleman a question, whether he desires to abrogate the whole body of the law relating to the supervision of towns over the establishment of roads?

Mr. KERNAN—I do not suppose the section, as reported by the committee, does that.

Mr. ANDREWS—They have exclusive jurisdiction over the establishment, construction, regulation and discontinuance of roads.

Mr. KERNAN—That is stricken out.

Mr. BARKER—Is an amendment in order?

The CHAIRMAN—Two amendments are already pending, and the Chair is of the opinion that an amendment is not now in order.

Mr. C. C. DWIGHT—I desire to ask that the amendment proposed by the gentleman from Seneca [Mr. Hadley] to the sixth section may be read, and I would state that my object in doing so is this. I believe the first clause of that amendment is germane to the sixth section of the report of the committee, in that it provides for the organization of the board of supervisors in each county, which the amendment of the gentleman from Oneida [Mr. Kernan] does not do; and if it turns out to be as I suppose, I shall ask that that amendment may be passed upon, so far as it provides for an organization of a board of supervisors as a substitute for section 6, before action is taken on the amendment of the gentleman from Oneida [Mr. Kernan].

The SECRETARY again read the first clause of the amendment of Mr. Hadley.

Mr. GRANT—I would like to inquire if the gentleman from Oneida [Mr. Kernan] will be willing to strike out the word "road".

Mr. KERNAN—I assent to strike out the word "road" if he desires it.

Mr. GRANT—The matter of roads is one of general legislation, and not purely local.

Mr. BICKFORD—I would suggest to the gentleman from Oneida [Mr. Kernan] that it would be much better to take the seventh section as printed here, and make it the basis of action and have it amended, and let that be substituted in place of the sixth section, and then it will be subject to amendment. We have it printed before us.

Mr. KERNAN—It is subject to amendment now.

Mr. BICKFORD—I know; but we have the seventh amendment printed, while the one which the gentleman from Oneida [Mr. Kernan] offers is not. This we have printed, and we can proceed more understandingly.

Mr. McDONALD—It seems to me we will get through with this quicker if the gentleman from Oneida [Mr. Kernan] will withdraw his amendment for the present, and allow us to pass upon the portion of the amendment of the gentleman from Seneca [Mr. Hadley], which provides for a board of supervisors. If it is not necessary, do away with the sixth section, and then offer his present amendment as a substitute for the seventh section. We are now really trying to amend the seventh section before we reach it. The sixth section simply provides for an organization of the board, and the first section of the amendment of the gentleman from Seneca [Mr. Hadley] provides for the same; and if we once decide that we will organize a board constitutionally, having decided that, we can then proceed to give it such power as we see fit.

Mr. LAPHAM—The answer to the suggestion of my colleague [Mr. McDonald], and to the suggestion of the gentleman from Cayuga [Mr. C. C. Dwight], is found in the fact that the organization of the board of supervisors is provided for by statute. Now, this amendment of the gentleman from Oneida [Mr. Kernan] recognizes that organization, and moves to strike out the sixth section, leaving the board of supervisors as now organized by law the body spoken of in the seventh section as amended by him, which takes the place of the sixth and seventh.

The question was put on the amendment of Mr. Kernan, and it was declared carried.

Mr. RATHBUN—I desire to offer an amendment to the amendment of the gentleman from Oneida [Mr. Kernan], unless it has already been adopted. It is in reference to the provision as to roads.

The CHAIRMAN—That was stricken out.

Mr. RATHBUN—Then it is all right. But I desire to strike out the word "bridges;" also in the eighth and ninth lines. Bridges are all provided for. The machinery in reference to them is perfect in every town and county in the State, and therefore it is unnecessary to make any provision referring that to the board of supervisors.

The question was put on the amendment of Mr. Rathbun, and it was declared lost.

Mr. HALE—As I understand it, the amendment offered by the gentleman from Oneida [Mr. Kernan] was adopted as a substitute for the amendment of the gentleman from Seneca [Mr. Hadley]. That I understand to be the effect of the vote. I therefore move to amend by prefixing to the amendment as adopted these words, being the first part of the section as proposed by the gentlemen from Seneca [Mr. Hadley]:

"There shall be in each of the counties of this State, except the city and county of New York, a board of supervisors, to be elected in such manner and for such period and composed of such numbers as is, or may be, provided by law."

I do not know that there is any absolute necessity for a provision of this kind. The gentleman from Ontario [Mr. Lapham] may be right, and

probably is, in saying that it is technically sufficient, as a recognition of the board of supervisors, to leave it as it is now; but I submit that it is better, inasmuch as we are defining as particularly as we are the duties and powers of the board of supervisors, that we shall in the Constitution expressly recognize the existence of the body and provide for its continuance.

Mr. CONGER—I would like to inquire of the gentleman who has just taken his seat [Mr. Hale] whether it would not be more apt in a constitutional amendment to specify who are supervisors instead of leaving it to be prescribed by law? If we are about to recognize the office as a constitutional office, why not say so in so many words, to be composed of one person, to be elected from each town in the county?

Mr. HALE—My answer is that I would not limit the Legislature in regard to the number of supervisors; it may be proper to give towns of large population more supervisors than towns of very small population. That is a matter very proper to be left to the Legislature.

The question was put on the amendment of Mr. Hale, and it was declared carried.

Mr. FOLGER—I move to strike out the words "public landings." It seems to me that would include the wharves of New York city, Oswego and Buffalo, and every other city.

The question was put on the motion of Mr. Folger, and it was declared carried.

Mr. COOKE—I understood the gentleman from Oneida [Mr. Kernan] to say judicial officers were excepted. I do not find it so in looking over the amendment. I therefore move, after the word "except," in line twenty-five, to insert the words "judicial officers," so that it will read: "except judicial officers and supervisors, which shall be fixed by the Legislature."

Mr. SEAVER—Will the gentleman also insert the word "constables?" It would be very incongruous to have the board of supervisors in one county fix the salary of constables for their service at one rate, and in the next county adjoining at another rate. He will never know what to charge.

A DELEGATE—And sheriff also?

The CHAIRMAN—Does the gentleman accept it?

Mr. COOKE—I have no objection to insert that. If it is the sense of the committee I will—otherwise not. I do not see so much objection to the difference in the fees of constables and sheriffs.

Mr. GRAVES—With the view of giving the committee an opportunity to look over this section carefully, and report their opinion in the morning, I move that this committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Graves, and it was declared lost, on a division, by a vote of 42 to 44.

Mr. GRANT—I would like to ask the gentleman from Ulster [Mr. Cooke] if he would be willing to include county clerks. We will have sixty different fees for county clerks.

Mr. COOKE—I believe I will have to decline to accept that amendment.

Mr. HARRIS—I would suggest to my friend from Ulster [Mr. Cooke], that he had better

change his amendment, and strike out the whole of that clause relating to the compensation of town and county officers.

Mr. COOKE—I accept that amendment.

The question was put on the amendment of Mr. Cooke, as amended by Mr. Harris, and it was declared carried.

Mr. BARKER—I offer the following amendment:

After the word "marshes," in line twenty-three, add "and provide for the mode and manner of awarding damages to persons injured thereby."

Mr. FOLGER—I think that is hardly necessary, for if the law did not provide for that it would be unconstitutional. They have not the power to provide for the draining of marshes, and the same law which provides for the draining of marshes, must provide for the compensation for the land taken for that public use, and if the law does not provide for it, it is unconstitutional and must fail.

Mr. BARKER—I think it is necessary to raise such a question, that the board of supervisors may provide the mode and manner of organizing it.

Mr. CONGER—I would like to know what that amendment means—how the drainage of a swamp or marsh could be a damage to a person whose land or marsh is drained. In an agricultural point of view that is a decided advantage. I do not know what the gentleman means.

Mr. BARKER—The gentleman himself is a perfect farmer and has his meadow-bottoms well drained. The adjoining neighbors want their meadows and bottom land well drained, and they have to dig a ditch and keep it open over his meadow, six or seven feet deep and fourteen feet wide on the top. The gentleman would want some damage for that.

The question was put on the amendment of Mr. Barker, and it was declared lost.

Mr. VAN COTT—I offer this amendment:

Add to section as amended by Mr. Kernan, "provided that the Legislature may pass laws on said subject, by a vote of three-fourths of all the members elected thereto."

Mr. VAN COTT—Before the State, the sovereign legislative power abdicates finally all control over the subjects included in the amendment adopted, I think the Convention ought to pause. It is conceivable that in the course of the twenty years that will follow the adoption of the Constitution, this power may not be so exercised by boards of supervisors, as to commend their action to the approval of the people. There may be great errors of neglect and omission; there may be gross abuses, and it seems to me that the sovereign power should retain some kind of control over the action of sixty subordinate legislatures. As it is, you surrender to these three score of local legislatures, the entire power beyond the control of the Legislature, beyond the control of the courts. It seems to me, sir, that that is an extraordinary abdication of the power of the State. Now, sir, we are all in favor in a general sense of the delegation of this power over all these subjects. What I object to, and what I wish to provide against by this amendment, is such an absolute and final sur-

render that if this experiment in local legislation shall prove a failure, there shall be no power in the State, legislative or judicial, to control—to get back, to correct. I am not particular about the number of members of the Legislature that it shall require to act upon this subject in case of abuse and in case of corruption. You may make it as large as you please, but still reserve in the Legislature a power to provide for some great exigency under which it ought to resume the exercise of its functions over these subjects. I make it three-fourths in the amendment. Make it as much larger as you please, only somewhere retain the control, I think necessary to guard against abuse hereafter. You will bear in mind, sir, that this confidence we are reposing in these local bodies is a confidence growing out of a different condition of things, than will exist under this proposed amendment. The powers which boards of supervisors have heretofore exercised, have been exercised under the control of the Legislature. Their functions have been subject all the time to resumption. They have exercised their powers with a sense of the control of the sovereign power, and of the ability of that power to resume the authority delegated; but if you commit this unconditionally and finally to the board of supervisors they are at once raised to the supreme legislative authority, and are beyond control, they will be conscious they are beyond control in the future, and under the temptations which grow out of the possession of great power they may commit great abuses, and these abuses as I said before, it will not be in the power of the government in any of its departments to correct. I think, therefore, we ought to make some such provision as this, by which we can exercise the necessary control over the boards of supervisors, and to preserve those functions from very great and dangerous abuses.

Mr. GREELEY—The section which I gave notice of yesterday, which I propose now as section 7, is in these words, concurring in the idea of the gentleman from Kings [Mr. Van Cott]:

SEC. 7. Every act of the board of supervisors, whereby a new or increased expenditure is incurred, or the compensation of any officer or public employee is increased, or any county or any other public debt is incurred, or by which private property is taken for public or corporate use, must be passed by yeas and nays and an affirmative vote of three-fifths of all members of the board shall be requisite to the passage of such act.

I do not propose to make a speech, but it seems to me that we need some real safeguard in this matter.

The CHAIRMAN—The Chair is of the opinion that the amendment of the gentleman from Westchester [Mr. Greeley] is not in order.

Mr. GREELEY—I will propose it when it is in order.

The question was put on the amendment of Mr. Van Cott, and it was declared carried, on a division, by a vote of 45 to 39.

Mr. RATHBUN—I move to strike out the word "ferries" in the eighth line of the seventh section. I suppose ferries are all provided for by law in the State, and they are under the control of either towns, cities, villages or counties already, therefore I move to strike it out.

Mr. CONGER—I cannot understand why this should be stricken out any more than the other matters—why, if the board of supervisors are to have jurisdiction of matters that are local, the power over the ferries and landings should be referred to the Legislature; for, if the Legislature parts with the right to establish a ferry, or parts with the land under water to build a landing, I cannot see any right of the Legislature to have control over that matter. After it is granted to a town it becomes a town right or a private right; and if it is a question of discontinuance of other matter enlarging the right I cannot see why the party should be sent to the Legislature back again. If you are going to give your board of supervisors anything of local jurisdiction it seems to me they ought to have this, and that we should reconsider the vote by which we have struck out public landings.

Mr. BARNARD—I would like to know which board of supervisors has jurisdiction over the different ferries on the Hudson river. There is the county of Dutchess on one side and the county of Ulster on the other. There is a ferry between these two counties. Here are several more, nine or ten, between the city of Brooklyn and the city of New York—

Mr. KINNEY—I would like to call the attention of the gentleman from Kings [Mr. Barnard] to the section. It says: "except ferries over navigable streams," and the Hudson river, I believe, is a navigable stream.

Mr. SHERMAN—I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Sherman, and, on a division, forty-three members voted in the affirmative.

The noes were called for, and members rose.

The CHAIRMAN—It is evidently lost.

Mr. E. BROOKS—I insist on the count in the negative.

The CHAIRMAN—The Chair will put the negative again. Those opposed to the motion will rise and remain standing until counted.

The members voting in the negative again rose and were counted, and the motion of Mr. Sherman was declared lost, by a vote of 43 to 44.

Mr. RUMSEY—I offer the following amendment—

The CHAIRMAN—The Chair is of the opinion that the amendment is not now in order, the question being on the amendment of the gentleman from Cayuga [Mr. Rathbun] striking out the word "ferries."

Mr. E. A. BROWN—I do not quite understand the amendment, and I rise for the purpose of saying, if I remember correctly, that there is a provision now by which the county court is authorized to grant ferry rights, and I would like to understand, before I vote on this section, whether by the proposed article all these powers that are given to county courts, and to other authorities, are to be abrogated by us, and you are obliged to call together the supervisors before you can get a ferry provided over a stream, where it is necessary, or make a bridge.

The question was put on the amendment of Mr. Rathbun, and it was declared lost, on a division, by a vote of 39 to 49.

Mr. RUMSEY—I offer this resolution.

The SECRETARY proceeded to read the resolution, as follows:

"All laws passed by the board of supervisors shall be presented to the county judge of the county, who, if he approve, shall sign the same, but if not he shall return the same with his objections to the said board, which shall immediately proceed to reconsider the same. If, on such reconsideration, two-thirds of the members elected to said board shall agree to pass the same, it shall become a law, otherwise not. The vote on such reconsideration shall be taken by ayes and noes, which shall be entered on the Journal of the board."

Mr. RUMSEY—There was a great deal of good sense in the provision contained in the report of the committee, that there should be a veto power somewhere upon the action of the board of supervisors, as a check upon this power proposed to be given to them; and as we have struck out the provision for a county supervisor who was to possess the veto power, I propose that the county judge be substituted. There can be no better person in the county than he to supervise legislation of that kind.

Mr. BARTO—I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the amendment of Mr. Barto, and it was declared lost, on a division, by a vote of 40 to 47.

Mr. COOKE—I am opposed to the amendment offered by the gentleman from Steuben [Mr. Rumsey], providing for a veto power, inasmuch as I can see nothing that looks like legislative power in the board of supervisors in the section as amended by the gentleman from Oneida [Mr. Kernan]. They are not to pass laws, as I understand the section, but the Legislature is to provide by general laws for doing certain things in regard to certain local and internal matters, through the instrumentality of the boards of supervisors. I have supported the amendment of the gentleman from Oneida on the ground that it was not in conflict with the declaration made by this Convention already, that the legislative power of the State should be vested in a Senate and Assembly. I do not consider that this amendment vests any legislative power in the boards of supervisors. By looking over the list of duties they have to perform—matters committed to their charge—it is hardly possible to find any authority in the boards of supervisors to legislate or pass any laws which can properly be submitted to any person having the veto power.

The question was put on the amendment of Mr. Rumsey, and it was declared lost.

Mr. MASTEN—I offer the following amendment:

Add to the end of the section as follows:

"But the powers conferred by this section shall not be exercised within the territorial limits of any city."

By the charter of most of the cities, many of the powers which are conferred upon the boards of supervisors by this amendment are conferred upon the common councils of cities. As for instance, the building of bridges in cities. It is

entirely within the power of the common councils of the different cities to take charge of the bridges within the cities, and also the drainage of land; and there are one or two other provisions in this amendment which do not now fall under my eye, over which it is necessary that the common councils of the cities should have full and exclusive jurisdiction, and the object of this amendment is that these powers which are sought to be conferred upon the board of supervisors should not extend within the limits of cities. I think this is necessary for the protection of the rights of cities, and I think it is time that we should pause in the wild career on which we seem to be entering. A great deal has been said about legislative corruption, a great deal more than is, I think, warranted by the facts. Gentlemen are trying to fly from it. Had we not better pause. Is it not better "to bear the ills we have, than fly to those we know not of?"

Mr. SMITH—A single suggestion I should like to make. It was understood, when this article was reported, that the Committee on Cities would make a report, and several other committees—the Committee on the Powers and Duties of the Legislature, and that undoubtedly there would have to be a general committee provided to take all the various reports and harmonize them, and perhaps the difficulties suggested now may all be arranged in that way.

Mr. SEAVER—If the cities of this State are a portion of the State I trust the amendment will not prevail. If they are not, in any sense, a portion of the State of New York, then they certainly should not be embraced within the provision of this section. If we are going to parcel out the legislative power and sovereignty of the State we should give it to every portion of the State alike. I think we are making a great mistake here, that we are conferring too great powers on the boards of supervisors, and that this Convention, by putting these great powers in this manner in the Constitution, are going to run into a greater evil than they are seeking to avoid. I think it would be well either to amend the amendment by adding after the word "cities" "counties," so that it will read "shall not exercise this power in any cities or counties or towns of this State, or elsewhere within the State."

The question was put on the amendment of Mr. Seaver, and it was declared lost, on a division, by a vote of 33 to 46.

Mr. CHESEBRO—I rise to a point of order. I call attention to the fact that there is no quorum voting.

The CHAIRMAN—The point of order is well taken. The Chair is satisfied that there is a quorum present. Gentlemen must vote on one side or the other.

The question was again put on the amendment, and it was declared lost, on a division, by a vote of 40 to 43.

Mr. LAPHAM—The amendment of the gentleman from Ulster [Mr. Cooke] strikes out entirely all provision on the part of the board of supervisors to fix the compensation of any county officer. Doubtless it did not occur to the gentleman from Ulster [Mr. Cooke] that there is a class of county officers, judicial officers, whose compen-

sation is now fixed by the board of supervisors, which varies in different counties, so that the exercise of that power by the board of supervisors is essential to public justice. As to justices of the peace, constables, or ordinary officers whose fees are uniform throughout the State that may be regulated by general laws. I ask, therefore, to substitute, after the word "assessments" in line 25, the words "the compensation of such county officers as is now or may hereafter be provided by law."

The question was put on the amendment of Mr. Lapham, and it was declared carried.

Mr. C. C. DWIGHT—I move to insert in the ninth line, after the word "streams," as follows: "the creation, alteration and abolition of separate road districts." I believe it is known to many members of the Convention that it is a somewhat prolific source of legislation to make a certain portion of highways a separate road district. This is certainly a matter which is entirely within the cognizance of the board of supervisors of the county.

The question was put on the amendment of Mr. C. C. Dwight, and it was declared lost.

Mr. ALVORD—I move to amend the proposition of the gentleman from Ontario [Mr. Lapham], which has just passed. I think he has not constructed his amendment right. As he has it, it is "such compensation as now is or may hereafter be given to boards of supervisors by law." It should be "the right to fix which shall be given to boards of supervisors by law."

Mr. LAPHAM—I accept that, sir.

The CHAIRMAN—The amendment will be considered adopted unless objected to.

Mr. BECKWITH—I move to amend the section by striking out the words "a majority," and inserting the words "two-thirds," so that it will read, "the board of supervisors of each county, two-thirds of which shall constitute a quorum."

The question was put on the amendment of Mr. Beckwith, and it was declared carried, on a division, by a vote of 55 to 15.

A DELEGATE—There is no quorum voting.

The CHAIRMAN—The question will again be put.

Mr. SEAVER—I wish to call the attention of the Convention to the effect of the adoption of this amendment. Where the board is very nearly equally divided between two political parties, if the rule requires that two-thirds shall be a quorum, it would be in the power of the minority of that board to deprive it of a quorum by absenting themselves, and thus prevent the board from transacting any business. It would derange all the business of the board. You could never get any business transacted by it, until you get two-thirds together, which you might not be able to do on any question which excited political opposition, or any local interest, perhaps. In the case of a board comprising, say, sixteen members, five of them absenting themselves would deprive the board of a quorum, and they would be unable to transact any business. I think it is a very dangerous amendment to adopt.

Mr. BECKWITH—I am not satisfied that the gentleman is correct, because if we give the power to boards of supervisors, with exclusive jurisdic-

tion over certain subjects, if a question arises that is of importance to the people, it will be very easy to get two-thirds of the supervisors together, but if it be a question of maneuvering on a political question, they may not come together, and probably the law had better not be passed at all. If passed, and if a question comes up of public interest, and one that will benefit the public, I have no doubt but two-thirds of the supervisors can be got together. If we give them exclusive jurisdiction, and there should be a board of supervisors composed of nine democrats and seven republicans, and the republicans should absent themselves, the five democrats can pass a law, if a majority constitute a quorum. I think we should require more to constitute a quorum, as there is no power to check their action or to prevent their measures becoming a law, no veto power, and no Senate to act as a check.

Mr. BICKFORD—The amendment of the gentleman from Clinton [Mr. Beckwith] would put it in the power of one-third of the board of supervisors to defeat any measure before the board by merely absenting themselves, and it would put the majority entirely under the control of the minority.

Mr. MERRILL—I move to strike out all in the section relating to a quorum.

The CHAIRMAN—The Chair is of opinion the motion is not in order.

Mr. COOKE—I think gentlemen have voted in favor of this amendment without observing one feature of it, which it seems to me, if we adopt it in its present form, we shall fix a quorum for all the purposes of the board, and shall require two-thirds to be present for all the ordinary purposes of the board of supervisors. In order to obviate that, I would suggest that the gentleman modify his amendment so that it will read:

"Two-thirds of whom, for the purposes of this section, shall constitute a quorum."

Mr. BECKWITH—I will accept that.

Mr. KERNAN—I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Kernan, and it was declared carried.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. BELL, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on Town and County Officers, etc., had made some progress therein, but not having gone through therewith, had instructed their Chairman to report that fact to the Convention, and ask leave to sit again.

The question was put on granting leave to sit again, and it was declared carried.

On motion of Mr. Morris the Convention adjourned.

THURSDAY, August 15, 1867.

The Convention met at 10 o'clock A. M.

Prayer was offered by Rev. I. N. WYCKOFF.

The Journal of yesterday was read and approved.

Mr. BELL presented the petition of A. H. Francis and forty-eight others, citizens of the

town of Lyme, Jefferson county, asking for a provision in the Constitution to protect the interests of the people of the State in the right of fishing in the international waters bordering on this State.

Which was referred to the Committee on the Preamble and Bill of Rights.

Mr. GRANT—I desire to ask leave of absence for myself from to-morrow afternoon for one week.

There being no objection, leave was granted.

Mr. HADLEY—I ask leave of absence for Saturday and Monday, on account of professional engagements which I cannot defer.

There being no objection, leave was granted.

Mr. COOKE—I am compelled to ask leave of absence from the session of to-day until Tuesday morning.

There being no objection, leave was granted.

Mr. VERPLANCK—I desire to ask leave of absence for three days.

There being no objection, leave was granted.

Mr. GOODRICH—I ask leave of absence for one week for Mr. Fuller, of Monroe, who is detained by reason of sickness in his family.

There being no objection, leave was granted.

Mr. T. W. DWIGHT—I ask leave of absence for the 20th and 21st of August on account of professional duties.

There being no objection, leave was granted.

Mr. E. BROOKS—In obedience to a request of a patriotic citizen, I ask leave to offer the following resolution:

The SECRETARY proceeded to read the resolution:

Resolved, That the select committee of five, to whom was referred the article on suffrage, be authorized to examine and report upon the expediency of providing for an open ballot or *viva voce* vote in all State and county elections, instead of the present mode of voting by secret ballot.

The question was put on the resolution of Mr. E. Brooks, and it was declared lost.

Mr. E. BROOKS—I call for a division. I wish to say this is a mere resolution of inquiry, not of instruction.

The question was again put on the resolution of Mr. E. Brooks, and it was declared lost, on a division, by a vote of 31 to 44.

Mr. POND offered the following resolution:

Resolved, That the several articles, as prepared and referred to the Committee on Revision, be printed, and three copies be furnished each member for their examination and use.

The question was put on the resolution of Mr. Pond, and it was declared adopted.

Mr. SHERMAN—I offer, for the purpose of having it printed, so that I may offer it again in Committee of the Whole, when the proper subject is up, the following resolution:

Resolved, That the following be adopted as a constitutional amendment, to be submitted to the people:

There shall be in each of the counties of this State, except New York, a board of supervisors, elected in such manner and for such period, and composed of such members, as is or may be provided by law; and they shall, in addition to the powers which they may possess, or which may hereafter be given to them by the Legislature,

and subject at any time to legislative modification, have exclusive jurisdiction over the following specified subjects; but such jurisdiction shall not be exercised in any case without the assent of a majority of all the members elected to such board, to be determined by ayes and noes, which shall be entered on the journal.

1. The location, erection, purchase and reparation of bridges (except over navigable streams), in cases where the general laws of the State shall be insufficient to accomplish the object; but where such bridges shall be between adjoining counties, the concurrent action of the boards of supervisors of such counties shall be necessary.

2. The location, purchase, erection, and care of buildings, and the purchase of real estate for town and county purposes.

3. The erection of portions of public highways into separate road districts for the purposes of improvement beyond what may be authorized by general State laws.

4. The use and working as public highways of turnpike, plank and macadamized roads after they shall have been lawfully abandoned.

5. The working and improvement of public highways, laid out in pursuance of the general laws of the State, in cases where such laws may be insufficient to accomplish the object.

6. The legalization of the informal acts of town meetings in reference to the raising of moneys authorized to be raised by law, and the legalization of the irregular acts of town officers, on the recommendation of the county court.

7. The fixing of the salaries of county officers, and of the number, grades and pay of clerks and subordinate employees in county offices, whose compensation may be a county charge.

8. The draining of swamp lands lying exclusively within the county.

9. The borrowing of money for town or county purposes in anticipation of taxation authorized by law.

Mr. SCHOONMAKER—I understand that no resolution shall be offered in reference to a separate submission until after all articles are passed.

The PRESIDENT—The Chair does not understand that the resolution contemplates separate submission.

The question was put on the motion of Mr. Sherman, and it was declared adopted.

The Convention resolved itself into the Committee of the Whole, on the report of the Committee on Town and County Officers, etc., Mr. BELL, of Jefferson, in the chair.

The CHAIRMAN announced the question to be on the amendment of Mr. Beckwith.

Mr. A. F. ALLEN—I think that this section, under consideration, is quite imperfect. It seems to me the powers we propose to grant to boards of supervisors are quite inadequate; and unless we go further than we have, at the present time, we shall leave the board of supervisors wholly without power to perform the duties they may be called upon to perform. It will be seen, I think, on examining the section under consideration, that in order to enable the board of supervisors to perform the duties we expect of them, it will require some legislative action. For this reason I wish to offer an amendment.

The CHAIRMAN—The Chair is of opinion an amendment is not now in order.

Mr. GREELEY—I desire to be heard, sir, in opposition to this amendment of the gentleman from Clinton [Mr. Beckwith]. What I desire the committee to consider is simply this: that there are many duties of the board of supervisors which are imperative, and which public interest absolutely requires to be performed; and this amendment seems to me to endanger the performance of those duties. For instance: there is the official county canvass of votes at the State election. Suppose the board of supervisors to be divided, seventeen on one side and thirteen on the other; and the political minority believe that, in the vote which has been taken at the State election, their party has been grossly defrauded, so that the majority piled up against them is a dishonest and unreal majority; and suppose that minority should choose to say: "We do not want this 2,000 or 20,000 majority rolled up against us; we will absent ourselves from the meeting of the board for the canvass of the votes, and thereby cause the canvass to fail. It will give a more real and just result than if we allowed these votes to be counted; so we will not have them counted." I perceive here a great public danger. The true mode, according to my judgment, is to make a majority of the members a quorum in all cases, but require three-fourths of the votes of all the members chosen to do certain things, which are not matters of course, not matters of routine and imperative duty, but substantially legislative: not those which grow out of the mere administrative and ordinary duties of the board of supervisors. I trust, therefore, that this amendment will be voted down, and that the end which seems to be desired, will be accomplished in a better manner.

Mr. BECKWITH—The gentleman who last addressed the committee has misunderstood my amendment. My amendment is to strike out the majority and insert "two-thirds of whom, for the purposes of this section." The result will be they will not possess the powers of legislation unless two-thirds of the body are present. It gives them the power of local legislation in regard to the subjects in this section, and the words "of whom" is inserted to confine it to the "purposes of this section."

Mr. GREELEY—I feel that the end sought for is not attained by this amendment. Two-thirds will constitute a quorum, and then they may proceed to do anything by a majority of that quorum when they may be but a little over one-third of the members of the board. It will not answer. We must require a different security than this. We must require that two-thirds or three-fourths of the members elected shall participate affirmatively in the action on every measure of a certain character, and we will have enough of them even then. I object to this amendment, and I hope it will be voted down.

The question was put on the amendment of Mr. Beckwith, and it was declared lost.

Mr. A. F. ALLEN—I wish now, sir, to offer the amendment to which I referred.

The SECRETARY proceeded to read the amendment as follows:

"Until otherwise provided by law, supervisors

and boards of supervisors shall continue to exercise the same powers and discharge the same duties as they are now authorized to exercise and perform."

Mr. KERNAN—I hope that amendment will be adopted. It will make the section so as to give exclusive power over certain subjects, making it different from the amendment of the gentleman from Kings [Mr. Van Cott]. This amendment comes in and gives the board of supervisors power, until the Legislature may change the law.

The question was put on the amendment of Mr. A. F. Allen, and it was declared carried.

Mr. MERWIN—I move to insert in line twenty-three, after the word "marshes," the words "lying wholly within the county." As it now is, where swamp and marshes are lying in different counties, there is no remedy practically. By inserting these words it will give a practical remedy.

Mr. EVARTS—Allow me to ask, through the Chair, whether the gentleman from Oneida [Mr. Kernan] included in his amendment the restriction of the powers of the supervisors to matters within their county, and where that provision comes in, and if it does come in, whether it does not cover these marshes.

Mr. KERNAN—It is not in the section now before the committee, except it may come in after the words "navigable streams." It was intended to have it come in somewhere, and I think it ought to come in after the word "power" in the fourth line. If the Secretary will put it in there it will be right.

Mr. EVARTS—Then it would cover the marshes.

Mr. KERNAN—It would cover all, I suppose. But I do not suppose, if we fail to put it in, anybody would think that this article would authorize them to legislate outside of the county.

Mr. MERWIN—The point in reference to my amendment is this, and to illustrate it I will give an instance that actually occurred. In the counties of St. Lawrence and Jefferson there is a marsh lying partly in both counties, about which there has been a great deal of litigation, and it has been the subject of laws passed by the Legislature. The people of the different counties have different views upon the subject of the manner of its draining. My idea is this: if either has a right to drain that part of it which lies in its county, there can practically be no way of getting any drainage at all.

The question was put upon Mr. Merwin's amendment, and it was declared lost, on a division, by a vote of 39 to 46.

Mr. FOLGER—As I understand the section as it now stands, a law may be passed—provided the legislative power is given to the board—by a bare majority of a bare quorum. So that in a board of supervisors composed of seventeen, five might pass a law, and I therefore offer an amendment to provide that a majority shall act:

"But no power shall be exercised under this section, by any board of supervisors, except upon the concurring vote of a majority of the members elected to said board."

The question was put on the amendment Mr. Folger, and it was declared carried.

Mr. T. W. DWIGHT—I move to amend the

section as it stands by inserting in the twenty-fifth line, after the word "assessments," the words "subject, however, to the power of the courts." I will briefly explain the reasons why I offer this amendment. As the section now stands, the board of supervisors have exclusive power over the correction of erroneous and illegal assessments, and this language would prevent any person from having the subject of an illegal assessment reviewed by a court. In the case of *The People v. The Assessors of the Town of Barton* (44 Barbour), it was held that a person had a remedy by mandamus directed to the assessors of the town directing the illegal assessment to be stricken from the assessment roll. These questions often involve also the constitutionality of the law imposing the assessment, and sometimes its constitutionality under the United States Constitution. It is therefore important, so far as these questions are judicial, that they should be examined by the proper courts, or, if it should be preferred by the committee, the whole clause might be stricken out and the subject thus left as it is now. I will, on further consideration, modify my amendment and move to strike out the words from "creation," in the twenty-third line, down to the word "assessments," in the twenty-fifth line.

Mr. EVARTS—I hope the amendment in the form in which my friend from Oneida [Mr. T. W. Dwight] has last suggested it will be adopted by the committee. Gentlemen must notice that we have used a word of great potency—the word "exclusive," and we must be very careful that we do not embrace in this power—which excludes the inferior organizations of the State, the towns, and which excludes the Legislature and excludes the courts—matters that ought to be more plastic and manageable than this definite and permanent provision will leave them in. I conceive that nothing is more dangerous than that boards of supervisors should have exclusive control of the correction of illegal assessments, for that certainly involves the mastery of the question whether the assessments are legal or not. As we all know, the administration of the taxes being committed to these local arrangements, the question of the constitutionality or of the construction of a State tax law may be finally disposed of without judicial control by this board having exclusive power.

Mr. POND—As I understand the amendment now proposed, I am opposed to it. It seems to me, sir, the better way would be to give power to the boards of supervisors to correct illegal assessments, and to provide for the repayment of the taxes thereby imposed to the parties from whom they have been illegally collected. It may be that exclusive jurisdiction should not be given to them, so that in case they should determine a law to be constitutional, which the judiciary may declare unconstitutional or otherwise, their decision shall not be final. But take a case where illegal taxes have been assessed and collected in a county, and where the law itself, under which such taxes are collected, has been declared illegal by the judiciary, what reason exists to prevent the tax payer going before the board of supervisors, and upon his application, for the board of supervisors passing a resolution directing the repayment of the illegal tax. He may thus be paid, and so you

may repay all the tax payers in the county from whom illegal taxes have been thus collected. Strike this power from this section, and you compel every tax payer in the county to resort for his remedy, in such a case, to the judiciary. The amendment, as I understand it, of the gentleman from Oneida [Mr. T. W. Dwight], as now proposed, is to strike out the whole power from the section, thereby prohibiting the extending this jurisdiction over the subject in any form to the boards of supervisors. Do I understand that to be the amendment?

Mr. T. W. DWIGHT—That is not the amendment. It leaves it to the Legislature as it is at present.

Mr. POND—That, perhaps, might remedy the evil, if the Legislature would give the power. But I submit that it is perfectly proper that the boards of supervisors should have that power subject perhaps to the courts, because in that case all necessity for appeal to the courts will be avoided, provided the board of supervisors are, willing to pay the illegally assessed and collected tax. Of course, therefore, I am in favor of giving the power in this constitutional provision to the boards of supervisors to correct illegal assessments, if there are such made, and also to repay the tax collected upon them. It is not to be assumed that the board of supervisors will vote to pay back a tax that is not clearly illegal; but if, in refusing to pay back a tax, they decide wrongfully, in such case I would leave the remedy in the hands of the tax payer to resort to the courts, if he is advised so to do. It strikes me it is a very salutary power to give to the boards of supervisors. It will avoid litigation and prevent the necessity of resorting to the courts, if you give them the power upon the application of the tax payers of the whole county, from whom taxes have been illegally collected, to pay it back, without any resort to the courts, and without any of the costs and expenses incident thereto. Now, to illustrate this, we have had within a few years past illegal assessments made in pursuance of a law of the State passed, imposing taxes, which taxes have been collected; and subsequently the law imposing the tax was decided by the highest court in the United States to be void; and yet the board of supervisors in some counties—in the county of Saratoga, for instance—have refused to pay back the illegally collected tax for the want of power so to do, although such taxes are conceded to have been illegally collected. The only remedy, therefore, of the tax payers of the county from whom the taxes have been so illegally collected, if any, is to resort to the courts. Now, I submit that ought not to be, and there is no necessity requiring it, and it can be avoided by conferring the appropriate power upon the boards of supervisors.

Mr. KERNAN—I do not claim to be very familiar with this subject, but I think we ought to have some confidence in the diligent committee who presented it. I suppose they intended by this, mainly, this class of cases: A farm is sometimes assessed in two towns, and sometimes erroneously assessed twice. It is intended to give the board of supervisors authority to correct this error and refund the money collected. As the law

now stands, the board of supervisors have not the power, as I understand, to change the assessment made by the assessors, nor have they authority to refund the money erroneously collected. Why, there are cases in the law-books on this subject. For instance, a case arose in the county of Chenango. The assessors assessed a man there without any jurisdiction at all, and the warrant being a justification of the collector, the money was collected of him. He applied to the county to refund the amount. It was held they had no authority. He applied to the courts for a *mandamus* to make them refund, and the court held that it was his only remedy to sue the assessor. He did so, and the honest assessor who made the mistake was compelled to pay it after the decision was affirmed by the court of appeals that the county could not be made to refund it. I do not suppose any one desires, I certainly do not, to take from the courts the right to declare a tax entirely illegal. I think there should be some power in boards of supervisors, where there has been an erroneous taxation of a man, before it has been collected, to correct it, or, if it has been collected, to refund it. This can be done without taking from the courts their proper jurisdiction.

Mr. CLINTON—I simply wish to make one suggestion to my friend from Oneida [Mr. Kernan]. I do not understand these words precisely as he does. I have great doubt whether the language employed in the section as it now stands will withdraw at all from the courts the determination of the question of legality or illegality. They are to have the exclusive power to correct erroneous and illegal assessments and refunding moneys paid on such assessments. I do not see that this withdraws from the courts or confers upon the board of supervisors the exclusive and final authority to pass upon the legality or illegality of the assessments, but simply leaves it to the board to correct them if they are declared illegal by the proper authority. That is the view I take of it.

Mr. T. W. DWIGHT—It seems to me there can be no doubt on this point. It prevents the courts from correcting an illegal assessment by any such process as *mandamus*, which was held, in the case to which I alluded, to be an appropriate remedy. This class of cases proposes, if a man had paid his tax, he might bring an action against the assessor, as suggested by the gentleman from Oneida [Mr. Kernan]. But why drive him to that practice? Why not allow erroneous assessments to be corrected by the courts; and besides that, under this section, what can the assessors themselves do? They cannot correct the assessment, as I understand it is exclusively within the board of supervisors.

Mr. CLINTON—It seems to me, with all due deference, the judgment on a *mandamus* leaves merely a ministerial duty to perform. They are ordered by the court to correct the assessments, but the actual correction will be made by the board of assessors under the direction of the court.

Mr. EVARTS—If the committee will indulge me for a moment, I am not disposed to ask what will or will not be the final determination of

courts on any of these mooted questions. The point is gained, I think, if the wisdom of the Convention were to strike out this provision from the exclusive and determinate powers, and leave it enactable by the Legislature, with such restriction as the public interest may dictate.

The question was put on the amendment of Mr. T. W. DWIGHT, and it was declared carried.

Mr. SCHOONMAKER—I move to strike out the words in the twelfth line, "loan or." The section, as it now stands, gives the boards of supervisors exclusive power to raise by loan any amount of money without limitation for town or county purposes. I think it is bad enough to levy it by tax without giving them unlimited power to loan money.

Mr. A. F. ALLEN—I hope the amendment of the gentleman will not prevail. It seems to me important that there should be some duty or some power in the boards of supervisors to meet important exigencies that may arise. Gentlemen, perhaps, think that it will be conferring additional power on the boards of supervisors. I think, on an examination, they will be mistaken. Additional power is conferred upon the boards of supervisors in relation to ferries and bridges, except over navigable streams; the confirmation of proceedings of towns; widening and deepening channels of streams, and the drainage of swamps and marshes. Mr. Chairman, it is important, as I said before, that the supervisors should have power to borrow and loan money. It is granted actually, under the present laws, as they now stand. There is not a year, I apprehend, but what more than one-half of the counties in this State are under the necessity of borrowing money for a longer or shorter period. I think they should be intrusted with some power.

Mr. BERGEN—I hope, sir, the amendment will prevail. The board of supervisors have not now the power nor ever had, of raising money by loans for long periods; they may have for short periods. But give them the power that is proposed by this section and they will have power to raise money for long and indefinite periods. The power, I think, is dangerous to give to a body who have no check upon them, and who may act upon the spur of the moment, or under excitement. Heretofore, when they desired to make these long loans, they have been compelled to go to the Legislature and ask for the power. What opportunity does it give to the inhabitants to look at the matter and see whether it is a wise or unwise proposition. What chance, do I ask, would the inhabitants of a county have to prevent these large loans, if they are given the power to raise them at a single meeting, when objections cannot be heard? It is not like going to the Legislature and having notice. This power is exclusive. The board of supervisors might meet, and some member get up a proposition to borrow \$100,000 or \$500,000, on a loan payable in twenty or thirty years, for some particular hobby, and he might carry it in the board of supervisors without the inhabitants of the county having notice of it, and thus prevent the majority of the people being heard, who may be opposed to it. If this power is given to the board of supervisors, it will enable them to carry out a loan of this kind which may be irrevo-

cable, and it might be for purposes which the county would disapprove of. Now, sir, I hope this extensive power will not be given to them. The board of supervisors are not immaculate. I was in the board of supervisors for years, and in my experience I have seen cases where, under certain impulses, important matters were passed, which ought not to have been passed, and which were injurious to the interests of the county.

Mr. PROSSER—I quite concur in the amendment proposed by the gentleman from Ulster [Mr. Schoonmaker]. If it is thought necessary that the Legislature should be restrained from borrowing money, is it not equally necessary that the board of supervisors should be restrained. It certainly seems to me it is, and, I think, surely the Legislature should not be permitted to impart power to others to borrow money which itself does not possess. Hence I trust the amendment of the gentleman from Ulster [Mr. Schoonmaker] will prevail.

Mr. SEYMOUR—It is very well known, I believe, Mr. Chairman, that in the operation of county matters, it is often necessary for the board of supervisors to loan money for a short period. Exigencies arise which demand the attention of the board of supervisors and the application of funds, often before the taxes have been collected, and while there are not moneys in the county treasury to meet the demand. Whether the power has been legally possessed in the board of supervisors heretofore, I do not know, but I do know that they have exercised to a considerable extent, the power of making temporary loans. I am opposed however to the extension of that power, as this provision now before the committee seems to contemplate there is no limit to it, and I think it a very dangerous power indeed, to be granted without limitation to boards of supervisors. We all recollect that during the late war when it became necessary for counties to act in raising and equipping volunteers and in sending them to the field; the counties were authorized by special law of the Legislature to act in this matter. I hope there will not be any general power given to these boards of supervisors to create debts without limitation. Whenever the emergency shall arise, when it shall be necessary for them to make long and permanent loans, let that question be presented to the Legislature of the State.

Mr. SCHOONMAKER—They have that power now.

Mr. SEYMOUR—If that is so we do not need it here; and the whole provision should be stricken out in my opinion. I think there is a necessity for some power to make loans, but that power should be restricted to temporary purposes. I will move an amendment here that the law may be so altered that they may make temporary loans for county purposes.

Mr. SMITH—It seems to have been overlooked, that the power now exists under the present Constitution, and the act of 1849 passed in pursuance thereof. That act authorizes the board of supervisors to raise money by tax; also authorizes the county to borrow money for the use of the county to be expended in the purchase of real estate and for the erection of county buildings. It also em-

powers the board of supervisors to authorize towns to borrow money for the use of the town upon a vote of the inhabitants.

Mr. KERNAN—Only a suggestion or two. It was declared by many gentlemen in the committee yesterday, that there was a desire to have power over certain subjects given to the boards of supervisors. Now if you cannot trust the boards of supervisors to borrow money when necessary for county purposes, I would ask, with what power can you trust them? Is it better to have applications made to the Legislature and get a bill passed authorizing a loan, than to leave it to the board of supervisors, who are to tax their neighbors, who are elected annually, who are to share in the tax, and who are directly amenable to the town itself. It seems to me this question as well as any other, will test the principle, whether we will trust exclusive power in the boards of supervisors for any purpose. For if you cannot trust them or confer upon them the power of borrowing money when necessary for county purposes, I do not know any power with which it would be safe to trust them.

Mr. EVARTS—It seems to me this accrediting to the boards of supervisors unlimited power of taxation and of loans, not subject to revision and control, is a departure from one of the first principles of government. If there be any feature more noticeable than another in the constitution of the boards of supervisors, as it is now organized, it is that it is what is called a borough system, and not a representation either of taxable rates or of population. Now, Mr. Chairman, what can be less suitable than that a single legislative board, without any check of double consideration in two houses, without any supervision of executive veto, and beyond any control of the Legislature, and in which the power is based upon town representation, shall be made a paramount authority, not only on the subject of tax and loan for county purposes, but also of tax and loan for town purposes within the county? Is it not far better, as the chairman of the committee had intended, to give the Legislature power to permit the town to borrow for the town or the county for the county, always subject to legislative control?

Mr. McDONALD—I am opposed to striking it out, and when the opportunity arises I shall offer this limitation, that no loan shall be made unless at a general election a majority of the voters of the county, or town or towns, proposing to make a loan shall consent thereto.

The question was put on the amendment of Mr. Schoonmaker, and it was declared carried.

Mr. RATHBUN—I propose to insert in the ninth line, in section 7, after the word "streams," these words, "and except such as are in cities." I make that proposition because in the city in which I reside we have a considerable stream running the entire length of the town, over which are five considerable bridges, wooden structures, costing a very large amount of money. Now, sir, if this power that is proposed to be given to boards of supervisors is given the board of supervisors of that county, it will have the power, as I understand it, to order stone or iron bridges to be built over all these points across the stream running

through the town, which might cost a hundred thousand dollars or more. At present the corporation of the city of Auburn have the entire control and management of these bridges, and are abundantly competent to take care of them, and I have a better right, it seems to me, to exercise a discretion in regard to the manner of construction than the board of supervisors, who have no interest in that question. I submit to the committee that although perhaps no fear need be apprehended from the misuse of that power, yet I am opposed to trusting such power to anybody anywhere, and for any purpose, except those who have an interest in it, and to whom it is already confided, who are competent and willing to take charge of it, and who are compelled to do so. On these grounds I hope those words will be inserted, so that in cities the effect shall be to leave that power to the corporations, and not give it to the boards of supervisors.

The question was put on the amendment of Mr. Rathbun, and it was declared carried.

Mr. HADLEY—I move to further amend by adding "and incorporated villages." I offer this amendment for the same reason that the gentleman from Cayuga [Mr. Rathbun] has included cities. There are in the county where I reside two large villages, which are divided by an outlet of Seneca lake, over which there are a number of such bridges as in the city of Auburn. There are in that county ten towns, and almost one-half of the population of the county is contained in those two villages, which are divided by this little stream. Now, the supervisors of a town living twenty miles away from there might order iron bridges, to any amount of expense, in these villages over this outlet. For that reason, I would like to have the words "incorporated villages" added after the word "cities."

Mr. SCHOONMAKER—I am opposed to the amendment, for the reason that the section, as it now stands, will give the superintendence, the management of all bridges over the canals to the county and towns where they are located, and it is bad enough to exempt the cities from the care of those, without also exempting the villages.

Mr. HADLEY—I do not suppose it is intended to include the canal bridges.

Mr. SCHOONMAKER—It does include them.

Mr. HADLEY—It is a stream, I apprehend, within the meaning of this section.

The question was put on the amendment of Mr. Hadley, and it was declared carried.

Mr. SPENCER—I move further to amend by adding at the end of the amendment of the gentleman from Seneca the words "and towns." If I correctly understand the purport of the section as it now stands, the entire control of all the bridges in the county, with certain exceptions, will be placed in the hands of the boards of supervisors, and it will be in their power, to the exclusion of the towns, to deprive certain towns in the county of any bridges at all.

The question was put on the amendment of Mr. Spencer, and it was declared carried, on a division, by a vote of 50 to 21.

Mr. CHURCH—This section has been so much mutilated, and there is so little of it left, and so much dissatisfaction with what remains, that I

offer the following amendment as a substitute for the section:

"The Legislature shall by general laws, applicable to all the counties of the State, confer upon the boards of supervisors all powers of local legislation and administration which can be safely confided to them, and during the existence of such laws the powers therein conferred shall be exclusively exercised by the board of supervisors."

It will be seen that this amendment makes it obligatory upon the Legislature to confer these powers upon boards of supervisors—it makes it obligatory to confer these powers by general laws applicable to all the counties of the State, and it provides that those powers shall be exercised exclusively so long as the laws remain in existence. Now, Mr. Chairman, at the commencement of this discussion, I thought that we might perfect the section reported by the committee and adopt the greater portion of it, something in the shape of the amendment offered by the gentleman from Oneida [Mr. Kernan]. But I think every gentleman of the committee must be satisfied from the discussion which has taken place and from the amendments which have been adopted that it is utterly impossible to specify in the Constitution those specific powers which shall be conferred upon boards of supervisors, nor do I believe that there is any danger in leaving this power with the Legislature. I do not indulge the fears which some gentlemen have expressed—that the Legislature will be disinclined to confer these powers upon the boards of supervisors. I have never seen any such disposition evinced by any Legislature, nor do I believe such exists. The Legislature will be glad, undoubtedly, to part with the control over this class of legislation, which is the most troublesome of any duty which they have to perform, and I am entirely satisfied that all we can do in this Constitution is to submit it to the Legislature with some such restrictions as are contained in this amendment.

Mr. RUMSEY—Do you propose that the Legislature shall have power, and shall confer upon the boards of supervisors such powers as may be safely intrusted to them, and you make no provision in your amendment that the Legislature may repeal any law conferring those powers. Is it any more than giving the Legislature a power to confer what in the end shall turn out to be constitutional powers.

Mr. CHURCH—The power of repeal is retained in the Legislature all the time.

Mr. RUMSEY—Not by that section.

Mr. CHURCH—Certainly the board of supervisors will exercise the powers exclusively, only during the existence of the laws conferring them, the Legislature retaining the power to repeal all the time.

Mr. RUMSEY—It is the same amendment that I offered, with the addition that the Legislature may repeal that law. The amendment that I proposed was:

"The Legislature shall confer upon the boards of supervisors of the several counties of the State such further powers of local legislation and administration as it shall from time to time, by general laws applicable to all the counties in the State, prescribe, and while such powers remain in said

boards of supervisors, the Legislature shall not exercise any portion thereof. The Legislature may alter, modify or repeal such general laws."

Mr. SMITH—Under the circumstances of the case I shall favor the amendment offered by the gentleman from Orleans [Mr. Church]. I concurred with the other members of our committee in reporting this section, believing that the Convention demanded at our hands that this power should be devolved upon the local boards. I am satisfied, now, from the discussion that the Convention is not prepared to take that step; and if they are not, I think it will be much better to adopt a provision like the one now offered by the gentleman from Orleans [Mr. Church], than to adopt such a piece of patch-work as presented in this section in its present state. As it now stands it begins by conferring exclusive jurisdiction upon the boards, and before it closes it gives concurrent power over the same matters to the Legislature. It presents the anomaly and absurdity of conferring exclusive power upon the boards of supervisors, and concurrent power over the same subjects upon the Legislature, all in one section. If this section should be adopted as it stands, and an individual should desire to get some corrupt scheme through the Legislature, all he would have to do would be to go there and secure three-fourths instead of a majority. It might cost him a little more in money or skill to get the scheme through, but it would come to the same thing in the end, and would not remedy the difficulty. I think, therefore, if the Convention is not prepared to perfect a section with the view of giving this power to the board of supervisors, and leaving it to them exclusively, it would be better to leave it with the Legislature, where it rests under the present Constitution. Let us act fairly, disingenuously, and honestly in the matter, and not profess to perfect a section giving this power to the boards, and then destroy it by tinkering and hostile amendments.

Mr. HARRIS—I am inclined to agree with the gentleman from Fulton [Mr. Smith], that the proposition of the gentleman from Orleans [Mr. Church] had better be adopted, not that I am any less in favor of transferring some classes of legislation from the Legislature to the board of supervisors, but I am satisfied, from what I have observed, that this Convention is not disposed to do it, and perhaps it is better we should adopt something that will amount to the same thing as the provision contained in the Constitution of 1846; but I hope gentlemen will not deceive themselves by supposing they have provided for any additional power of legislation in the board of supervisors. The proposition of the gentleman from Orleans [Mr. Church] simply requires the Legislature to transfer to the boards of supervisors such powers as in the judgment of the Legislature may safely be entrusted to them. Now, sir, the Legislature will never think the boards of supervisors can safely be entrusted with any more power than they now possess. It is contrary to the most obvious principles of human nature. No body of men ever thought it best to part with any power they possessed. An old writer has said, "Power is always at war with its own boundaries," and you will find the Legislature always holding on with a firm

grasp upon the power given to it by the Constitution. It is just so with courts. They are always inclined to consider with favor the arguments which support the jurisdiction claimed for them. They will always be slow to deny their own jurisdiction. It is human nature, and as was very forcibly stated by the gentleman from Onondaga [Mr. Alvord] yesterday, you cannot get the Legislature to part with any power which, by the Constitution, they are authorized to exercise, and the Convention ought not to deceive itself by supposing that by adopting any such provision as that contained in the proposition of the gentleman from Orleans [Mr. Church], it is going to increase the power of the boards of supervisors. But, on the whole, I think we had better adopt it, and let it stand as it does now in the Constitution of 1846.

Mr. KERNAN—I concur in the views expressed by the gentleman from Albany [Mr. Harris], because I am satisfied that the majority are not disposed to give any exclusive power to the boards of supervisors, and unless you give them some exclusive power, I think it had better be left to the Legislature to give such power as they, from time to time, shall see fit. The proposition of the gentleman from Orleans [Mr. Church] is preferable to anything like the proposition as it now stands, because it is liable to the criticisms made by the gentleman from Fulton [Mr. Smith], that while we profess to give exclusive power on certain subjects, to boards of supervisors, men who get beaten in the board of supervisors have only to come to the Legislature and get a two-thirds or a three-fourths vote on these local matters; therefore it is only making two Legislatures instead of one. If this body is not willing to intrust the board of supervisors with the power of borrowing money to build a bridge, or for any other county purpose, we cannot intrust it with any other power, and I think it comes back to what was stated by the gentleman from Albany [Mr. Harris], that the Legislature will confer only such powers as it deems advisable to confer; therefore I think the proposition of the gentleman from Orleans [Mr. Church] is preferable to the proposition as it now stands.

Mr. LOWREY—I am in favor of the proposition of the gentleman from Orleans [Mr. Church] as far as it goes, but I think it can be made more comprehensive. I have drawn an amendment for that purpose, which I will read:

"Towns, villages, and boards of supervisors of counties shall continue to possess the powers now vested in them by law, until the same shall be changed or modified by the Legislature. And the Legislature may confer by general laws upon said towns, villages, and boards of supervisors such further or other powers of local, legislative and administrative character as it may from time to time deem proper."

It is more comprehensive in this respect; it includes towns and villages as well as boards of supervisors, and also points out that that power now existing shall continue until modified or changed by the Legislature.

Mr. VAN COTT—I prefer the proposition last suggested by my colleague from Kings [Mr.

Lowrey]. It seems to me that two general propositions will cover the whole subject now under consideration; one requiring the Legislature to delegate certain powers by general law to the board of supervisors; the other to inhibit the Legislature from passing any special law on this subject, except by a very large majority, say four-fifths, or any proportion of both houses of the Legislature. I have heard but one objection suggested in the course of the debate to leaving this subject to the Legislature, and the objection was this: the Legislature will not willingly part with any of its power. But if you require the Legislature to pass these general laws delegating the power, and then inhibit the Legislature from passing special laws, the Constitution accomplishes itself what you intend to require the Legislature to accomplish, but distrust the Legislature in accomplishing. If you require general laws on this subject conferring the power, and then say the Legislature shall pass no special act comprehended within the enumerated classes of subjects, then you at once deprive the Legislature of the power, practically (I mean that which you suppose it wishes to retain), and will restrain the Legislature from defeating a general purpose, requiring the passage of general laws vesting in boards of supervisors this power. Now, my general proposition would be just that to require the Legislature to pass general laws vesting in the boards of supervisors legislative power over the subjects enumerated in this seventh section, and any additional subject you may include. Then provide that no special law on any of these subjects shall be passed, except by a vote of four-fifths of the members elected to each house of the Legislature. I agree substantially with the proposition of the gentleman from Orleans [Mr. Church], but I think his idea will be more effectually carried out in the proposition of the gentleman from Kings [Mr. Lowrey]. It seems to me, however, that the suggestions now made and so far concurred in are a step in the right direction.

Mr. BECKWITH—I am in favor of the proposition of the gentleman from Orleans [Mr. Church] for this reason: I think it is an advance on the Constitution of 1846, because, if it be adopted and power be granted to the boards of supervisors, that power will be exclusive while they hold it. That is in advance of the Constitution of 1846, in that respect. Concurrent jurisdiction will not then remain with the Legislature; and I think the objection that the Legislature will not be willing to grant to these local bodies jurisdiction to legislate upon these subjects is not well taken, for this reason: that when the Legislature have granted this power, they understand that, if they are in any way abused, they can recall it; but if you put it in a position by a constitutional provision, so that the Legislature cannot recall them, then they would not be very likely to give up any of their power. The proposition of the gentleman on my right [Mr. Lowrey] does not make the power to be granted to the boards of supervisors, by his proposition, exclusive, while the boards of supervisors are in the enjoyment of this power. But it retains in the Legislature concurrent jurisdiction. He has no provision in his proposition making it exclusive, while the boards of super-

visors shall exercise this power, and that is my objection to his amendment. I prefer that of the gentleman from Orleans [Mr. Church] for the reasons which I have stated—that it will be exclusive while these boards possess the power, and it will be in a condition where the Legislature can recall these powers if they find them in any way abused.

Mr. E. BROOKS—I rise to suggest an amendment to the amendment of my friend from Orleans [Mr. Church], that he will permit to be inserted in his amendment words like these: "At the first session after the adoption of this Constitution, and from time to time thereafter."

Mr. CHURCH—I will accept that amendment.

Mr. E. BROOKS—I wish to say but a single word in regard to the proposition now under consideration, and the report of the committee. We have been engaged for three days in a sort of battle-door and shuttle-cock operation, doing in one hour what we have thought proper to undo in the next, until we have arrived at the present mortifying condition. Leading members of this Convention entertaining entirely different views when this report was first brought under consideration, have changed their opinions since the debates have commenced, and are now hopeless of any reform. I must confess, for one, that the action of this Convention, as to the article under consideration, is the most mortifying act connected with all its deliberations. I had hoped that from the report of the committee before us, we would be able to accomplish more practical reform than in the consideration of almost any other subject committed to this Convention, but it seems that all we are permitted to do is, in substance, just what the Legislature and boards of supervisors have the power to do under the existing Constitution, and under existing laws. The only hope I now have is in the amendment of the gentleman from Orleans [Mr. Church], adopting my own amendment, and by insisting that the Legislature shall be required, at some specific period of time, to pass some general law upon the subject under consideration.

Mr. GRAVES—Are amendments now in order?

The CHAIRMAN—The Chair is of opinion that no amendment is now in order.

Mr. LAPHAM—I prefer the amendment of the gentleman from Orleans [Mr. Church] to that of the gentleman from Kings [Mr. Lowrey] for the reason suggested, that it gives the boards of supervisors exclusive jurisdiction, under the laws existing upon the subject, and takes it away from the Legislature. There is no question, Mr. Chairman, but in the minds of the people a transfer of power from the Legislature to the boards of supervisors over local matters is as strongly desired as any change which this Convention can possibly make. The only difficulty is in providing by the Constitution for the subjects over which the boards of supervisors shall have jurisdiction, and I agree that the discussion thus far has illustrated the entire impracticability of our attempting any designation of the subjects. But I suggest to the gentleman from Orleans [Mr. Church] that he has incorporated in his proposed amendment a phraseology which is worse even than that of the present Constitution, and which I ask him

to correct. The language of the present Constitution is: "The legislature may confer upon the boards of supervisors of the several counties of the State such further powers of local legislation and administration as they shall from time to time prescribe." It leaves it simply discretionary, according to the language of the present Constitution. Now the language of the amendment proposed by the gentleman from Orleans [Mr. Church] is this: "That the Legislature *shall* confer power over such subjects as may safely be confided to boards of supervisors." It is the introduction of the word "safely" which leaves the Legislature still more at liberty, if possible, than they were by the Constitution of 1846—to refuse to grant the power altogether. I ask the gentleman from Orleans [Mr. Church] to strike out that word "safely," and to have this a mandate upon the Legislature to confer upon the boards of supervisors powers of legislation and administration in regard to local affairs, leaving it of course discretionary with the Legislature to determine as to what local affairs really mean, but making it mandatory that they shall confer the power. You introduced the word "safely" here, and by that word you leave the Legislature to say, "we cannot safely trust the boards of supervisors with anything," and thus wholly destroy the object desired.

Mr. VERPLANCK—Will the gentleman allow me to ask him a question. Is not this Convention as competent to decide what matters shall be left to the boards of supervisors as any Legislature that will ever assemble in this State?

Mr. LAPHAM—I have thought so, and if we had the time the Legislature have to do it, I presume we could do it equally as well; but the trouble is we are not here to legislate, and have not the time. We simply confer the power on the Legislature, and they can take the power and exercise it.

Mr. VERPLANCK—I do not yet abandon the hope that this Convention will regulate this matter of confiding local legislation to the boards of supervisors. I did intend to rise to a point of order that the amendment offered by the gentleman from Orleans [Mr. Church] was identical with the amendment offered by the gentleman from Steuben [Mr. Rumsey], and which was voted down by a very large vote in this committee, but I was willing that this amendment should be offered in Convention, and that the Convention might then vote down the proposition, if it chose. It is now proposed to ask this committee again to vote upon this proposition, and I do not rise to discuss it, I rise to ask gentlemen opposed to legislative corruption to vote against this amendment. I do it in the belief that if there is any subject in regard to which members of this Convention are in accord, it is on this subject of legislative corruption, and no course has yet been suggested to remedy the evil, except by withdrawing from the Legislature this matter of local legislation. And I hope that the amendment of the gentleman from Orleans [Mr. Church] will be voted down and not approved by this committee.

Mr. CHURCH—Will the gentleman allow me to ask him a question? I desire to ask the gentleman

whether he is prepared himself to specify the power which he thinks ought to be conferred on the boards of supervisors, that he would be willing to vote for himself?

Mr. VERPLANCK—I confess, Mr. Chairman, that I am not able at this moment to say that I am in a position to do what the gentleman asks. I thought last night it was a great mistake for this committee not to rise and report progress. There was a time last night when a constitutional provision, if it had been properly prepared, might have been passed in this committee. But the committee, while they were entirely willing, I have no doubt, to pass the necessary provision, did not understand how it could be done. The manner of doing it was the difficulty. In the mean time, the gentleman from Kings [Mr. Van Cott] moved his amendment, which was adopted, giving to the Legislature power to pass, by a three-fourths vote, any matter which should be rejected by the board of supervisors, so that a party might go before a board of supervisors upon a proposition, and at the same time before the Legislature. If he failed to get a vote of the majority of the board of supervisors, he might get a three-fourths vote of the Legislature; and when a corrupt project comes before the Legislature, in which there is money, it can as easily be carried by a three-fourths vote, as by a majority vote. I am not sure but that the amendment of the gentleman from Oneida [Mr. Sherman], which was moved in Convention and referred to the Committee of the Whole, might answer the exigency. I hope this amendment will be voted down.

Mr. GRAVES—The importance of this section in the minds of the people, who are looking with deep interest upon this discussion, and to the foundation which is to be laid for the future security against bad laws and extravagant legislation, calls upon us to weigh well the acts of this truly intelligent committee, who have been guided in their examination by the dictates of the public will; and who have reported in obedience to what every member of this Convention knows to be the judgment and wish of the rural districts, who compose the boards of supervisors in this State, in whom this Convention has so little confidence, and for which they have so little respect. We have, as we all know, in each town in the county a supervisor, who is chosen by the people—not for his wealth, nor for his political opinions, but because he is a man of integrity, a man of judgment, a man of intelligence, a man on whom his political opponents can look with confidence. He is the political competitor of a man of equal merit, and his success in the town meeting is equally advantageous to all; and if his competitor had succeeded and he been defeated, it would have been equally well for the town interest. Although elected by a party, he is not elected for a party. He assumes the guardianship of the town's rights and becomes the custodian of the town's money. He is the chairman of the board of town equity, which carefully examines, allows, or audits claims, which are annually made for services rendered by inferior officers; and the town demands of him an annual account of his receipts and disbursements, and a strict fidelity

to the town interests, and an unyielding defense of the town rights. By operation of law and in obedience to its requirements, he becomes a member of a legal as well as equitable tribunal, made up of minds and intellects like his own, convening annually to liquidate the outstanding demands against the county, as well as to adjust the individual claims which have grown up within the last year, and also to equalize the mutual liability of the towns in the county to defray the local as well as the public debt. The purposes for which they assemble, the duties devolved upon this board or tribunal, are of such a character as to secure the public confidence not only in their ability, but in their approved integrity. Each member of this board is a check upon the other, for it is all important that each supervisor should guard well his own town interest, the equalization and assessment of taxes; that the several towns may share equally, for an unequal apportionment upon any one of the towns, or the creation of a debt upon any town, through the negligence or want of skill of the supervisor, would prevent his re-election. And when the public interest demands that a town should be aided in the construction or maintenance of bridges or highways, this board will cautiously create a county liability which shall deplete the treasury or increase the burden of taxation, so as to awaken the attention or arouse the suspicion of their constituents. Now, sir, do we not know that there is no man, or body of men, surrounded with equal watchful care or deeper pecuniary solicitude. And, sir, do we not know that there is no man so sure not to be re-elected as a supervisor who fails to represent and care for the interest of his town, or the interest of his county? And yet, sir, with his conceded ability, with his known integrity, with all the safeguards with which he is surrounded by private, town, and county interest, this Convention stops to raise the inquiry whether it will be safe to give into the hands of these men the control and management of the property, business and interest of their constituents, who are standing by and watching with interested attention the manner in which that trust and duty is performed. Is there any man here who doubts the capacity of this board to guard the county rights? And do we not all know that the several boards of supervisors in the State are equal in capacity, with an equal number in the Legislature? Their first and last duty is to care for, and protect the rights and interests of their constituents. What motive can induce the individual supervisor or the board, to do anything except what the actual necessity of his or their constituents demand? To secure town and county rights, to protect town and county property, and to guard well the treasury of both. The enjoyment or the exercise of those rights can by no possibility interfere or conflict with any other localities, for general laws will guard and equalize the rights of the public, and from the effect of which general laws no locality can escape. For years the different counties in this State have been anxious to regulate their internal affairs and fiscal concerns and their local rights and interests. They have doubted the wisdom of the policy which allowed others to do imper-

fectly what they know they could do well for themselves at home. They have questioned the purity of the motives and the sincerity of the purposes of the law making power which has so often been charged with acting from selfish and sordid motives. Sir, I am not mistaken when I say that the rural districts expect that this radical change will be made. They ask it as a matter of right, and if the Convention have so little confidence in the ability, integrity and capacity of the people in their respective localities to manage and regulate their own affairs, would it be surprising that the distrust should be reciprocated, and that this Convention would learn by the ideas of November that the people are the government and will exercise their power when their rights are ignored. They have submitted from necessity to this local wrong, and now, while these wrongs and deprivations are fairly presented and fully understood, in my judgment it is the clear and manifest duty of this Convention to relieve those localities from this foreign legislation and make each county the guardian of its municipal rights, subservient to the general laws which shall regulate and govern all.

Mr. RATHBUN—I am in favor of the amendment offered by the gentleman from Orleans [Mr. Church], and I am in favor of it more especially because it comes very near to the language of the Constitution of 1846, and I hope, sir, that the Convention will exercise good judgment and good sense in adopting it for that reason. Now, sir, in regard to those essays which are written and read here in reference to the purity of the supervisors, I must say that I do not regard it as in good taste, and I might ask the gentleman from Herkimer [Mr. Graves] if it takes all the men that are honest in that county to make supervisors, and whether they have not one man to spare to send to the Legislature?

Mr. GRAVES—We have a very honest board of supervisors, and a good many of the same sort.

Mr. RATHBUN—I am happy to hear it, and yet it would appear from the gentleman's argument that it takes all the honest men in the county to make supervisors and that the villains were sent to the Legislature. Now, how can we trust them? I do not know how it may be there, but I do not believe it is so in half the counties in the western part of the State; and I do believe this continued declamation about the corruption of the Legislature and eulogy on the board of supervisors, is a good deal of sham and nonsense. I do not believe that the people, who are so cautious and prudent and judicious in the selection of supervisors, are such block-heads as my friend across yonder [Mr. Greeley] would say in the selection of members of the Legislature. The argument is, the higher we go, and the more important the office, the worse the man selected for the office. Honest men taken from little places, around home, and dishonest men taken to represent the county abroad, and then you must take the power away by the Constitution, from the Legislature, and give it to these honest men at home, all of it, because they cannot afford to indulge in the luxury of sending honest men to the Legislature. I had hoped we had seen the end of this, and I had

hoped the time might come when we might look upon the Legislature as a thing not to be loathed and despised by every man in the community.

Mr. HAND—I had hoped last night that this thing was settled in a manner as nearly right as we would be likely to get it, but I see by the discussion to-day we are taking the back track. Now, with regard to the honesty of supervisors or of members of the Legislature, there is one thing, one little curious trait in human nature, we must not disregard. We must not leave it out of view. The most honest men are those who are most closely watched. It is perfectly safe to deal with mankind as if they were rogues. That is a safe maxim in business, and although all men we intrust with power are not rogues, it may be well to keep in view that safe old maxim. The difference between supervisors who are intrusted with power and the members of the Legislature is very obvious in many respects. No gentleman who has looked upon the action of men intrusted with power has failed to observe this difference. The board of supervisors are directly responsible to the people, and it is this direct responsibility that has brought me to the conclusion that this power should be intrusted to them. No man who abuses that power can be re-elected. If that power is abused we have the remedy in our own hands; it is under our own control, and we apply the remedy at any time. But a man equally honest may be sent to Albany, and through the manipulations of men better skilled in the peculiar arts by which certain things are brought about, may operate on that man to his disadvantage. It may be through the want of experience. Men have been sent from Broome county who have been induced to give votes, ignorant of the use that has been made of them for base purposes. They were pure-minded and honest when they left Broome. It is one thing to be honest when a man puts on the harness, and another thing to remain honest after the trial to which he is subjected in Albany, commencing perhaps with the same purity of character as any of his constituents. Now a man comes here to Albany (and the gentleman who last spoke understands the process perhaps better than any gentleman in this room understands it), and he is approached by men who have a scheme to carry through here, and which has money in it; he is not approached directly by a bribe, but various influences are brought to bear on him. He is made the tool of unscrupulous men, sometimes with perfect honesty and integrity, and through his instrumentality these schemes are carried out, and local objects are accomplished, and local wrongs are inflicted upon counties, notwithstanding his honesty, notwithstanding his integrity of purpose the scheme is carried out, which could not be carried out in a county interested in the matter of this scheme. Now, the board of supervisors, although they may be no more honest than members of the Legislature, as we regard honesty; but still they are under the eye of their constituents, and those local interests, best understood by these constituents, it seems to me are safest in the trust of men immediately responsible to the people, regarding the question of honesty

as it is regarded by the gentleman who last spoke. For this reason I hope, without any supervision of the Legislature, that certain interests, local in their nature, will be placed beyond the power of the Legislature, corrupt or not corrupt; a body having no knowledge, as the supervisors have, of the nature of these things, a body which may be imposed upon by false representations, as they have been many a time, and we think in their action they have failed to be honest because, as a body, they are not as capable of judging of the nature of our interests as we are ourselves, not as capable of applying the remedy to the evils as we are through our local legislation. I hope this power may be committed to the board of supervisors for that purpose, and that this amendment will be voted down, and we return to the plan adopted and recommended by the committee in their report, essentially in spirit and doctrine. I believe the people expect it of us; I know my constituents do. I believe that is one of the reforms they look for, and I believe this is so throughout all the State. I believe the people expect it, and will sustain us in such action; in fact, any action which shall avoid the concentration of legislative power, and bring responsibility as near as possible to the people.

Mr. McDONALD—It is evident the minority have succeeded in defeating the majority for the day in this Convention. It is admitted the board of supervisors ought to have the power. It is admitted, I believe, the people sent us here to provide that they should have it. It is admitted the majority are now, and always have been, in favor of it, but the minority have succeeded for the present in defeating it, on the ground that it is difficult to accomplish it. We have worked here three days; but by a certain move which is well known in all legislative bodies, by the minority continually offering amendments with the intention to defeat it in the end, seeking an opportune moment when arguments are carried a little too far to shove in an amendment which thereby lessens it, in that way they have succeeded for the day in defeating it. I think the wishes of the people, and I think the will of the majority of the gentlemen here, will demand at least that this shall not be given up. It is difficult to do this thing. It is a new thing to be done, but as long as it is the will of the people, as long as we are sent here for the purpose, as long as the majority of us are in favor honestly of giving the boards of supervisors exclusive local jurisdiction, it seems to me that although for the day it is defeated, there is a time coming when the amendment of the gentleman from Oneida [Mr. Kernan] which has been carefully written, and will be printed, and can be carefully looked at, and when in Convention it comes up again, the friends of this exclusive jurisdiction can again express their opinion in a form that will be effective.

Mr. S. TOWNSEND—At present I should be inclined to favor the amendment, as I think it is a great improvement on the position which the Convention have before reached. That improvement consists mainly, in my mind, of its adoption of the imperative "shall" in place of the permissive "may." I happen to know, in this instance, and certainly in another of the provisions of the

Constitution of 1846, the substitution of the word "may" for "shall" has defeated for twenty years the intentions of that body. When alluding to that point, I would say it has been stated here, and almost uncontradicted, that this principle, as one to be placed in the Constitution, was then unasked for by the people. I can tell gentlemen, from my own knowledge, there was a decided sentiment at that time in favor of conferring such local legislation on the boards of supervisors, the local officers of the county and towns, and it is earnestly desired on the part of the people now. The chairman of the committee who had charge of the matter then hardly ever permitted it to come together. He was a person of great popularity and influence. I took occasion once or twice to do what was always an unpleasant act on the part of a member—to call on that gentleman to know when we should expect the report of his committee on that subject. I speak now from memory (and it may not be very tenacious on the point), that that committee made no real report, except this little seventeenth section, with the word "may" in it. With a desire of carrying out the intention expressed by the gentleman last up from Ontario [Mr. McDonald], of having the various propositions, certainly the more important ones, all printed for our future action and information, I shall vote in favor of the motion of the gentleman from Orleans [Mr. Church], believing that that will secure to us a very decided advance toward what the people desire. I believe, sir, that if this Constitution is adopted, with the amendments we will make, with reference to securing a better character of legislators, that a class of men will come up here so instructed by our constituents that they will define the numerous and appropriate powers to be conferred and to rest hereafter with the authorities of our towns and counties, better, too, as the gentleman from Ontario [Mr. Lapham] has said, than we have time to do it, and yet gentlemen and myself have sat here late (although the effect of sitting late, as my friend near me [Mr. Verplanck] has said, did not profitably exhibit itself last evening) in order to endeavor to see if, in the intelligence of this body, there was power of constructiveness (I sadly fear there is not), of sufficient scope and ability to write in the Constitution some further specific power, in regard to this subject. I listened with some attention to the remarks read by the gentleman from Herkimer [Mr. Graves], with regard to the general character of the board of supervisors. In my own immediate county, I know of an instance which would carry out to the fullest extent all he said with regard to the character of some of these gentlemen. There was a gentleman who had just declined that office there, and who had held it for some six or seven years, in a county where the vote at times is quite close, and very much varies from one thousand to one hundred majority, who could have had the unanimous vote of his town for the office of supervisor, because, if I can so express it, the citizens believed that in him an able and intelligent integrity would be brought to bear, as supervisor, in carrying out, in his conduct during his term of office as supervisor, every detail which would concern their interest so well that

they so respected and understood the manner in which he discharged his duties, that he could have held his office perpetually if he chose to do so. I had hoped this honesty had attached to the boards throughout the State and was not exceptional. The gentleman from Cayuga [Mr. Rathbun] had perhaps come in contact on many occasions with members of the board of supervisors and thus imbibed a prejudice, as the poet says, (and I believe I am permitted to indulge in poetry, as a good deal of it has been introduced here lately)

"Pray Goodie please to moderate the rancour of your tongue,
Remember, where the judgment's weak, the prejudice is strong."

Mr. RATHBUN—I have not intimated a word in which the board of supervisors of Cayuga have not done as I would desire them to do. They will bear the highest eulogy that can be given, in my judgment, to any county; but I oppose this matter because I do not believe you can transfer any other power, or but very little, without doing what you will all have occasion to repent.

Mr. S. TOWNSEND—I was about to say to the gentleman from Cayuga [Mr. Rathbun] that he may not have intended what he said as a reflection upon the board of supervisors in his immediate vicinity, but a very fair inference would lead to that result. I shall support the amendment of the gentleman from Orleans [Mr. Church], which has been partially amended by his consent by the gentleman from Richmond [Mr. Brooks]. I hope, if adopted, we can then rise, and that the committee will order all our various amendments printed and pass over to some other article of the Constitution that may be ready for our consideration, and come together on another day and adopt the ideas and views of the gentleman from Ontario [Mr. McDonald], and perhaps go on and give another day, or a couple of days, in endeavoring to engraft into the Constitution some further power in the board of supervisors who are in immediate contact with the people of the vicinity, and whom they can better control than the members of the Legislature some three hundred miles distant, at times, from their constituents.

Mr. DUGANNE—It seems to me that there is rising continually, like a ghost, before some gentlemen of the Convention, in this chamber, the figure of the present Constitution, crying, with uplifted finger, "Thus far shalt thou go and no farther." I do not think we are here to be bridled or restrained in any way by a slavish adherence to the present Constitution. We are here, as I have heretofore said, to amend where an amendment is needed, and to correct where correction is required. I am in favor of so amending as to delegate these powers to the county boards, for various reasons, one of which is that there is a lobby in every county; and that lobby is an antagonistic lobby to the one which is found every winter in the city of Albany. It is a lobby of the people, a watchful, care-taking, supervising lobby, which attends to the interests of the people, which is not bribed, which is not intimidated, which is not flattered. Sir, it has been well said, that gentlemen are changed, from what they were in their localities, by a short residence in Albany. I have known gentlemen to become quite

other persons when absent from the restraints of home only for a short season. I have known members of the clerical profession, members even of the legal profession, who, when removed from local and moral influences, and brought under different and distant influences, have become inclined to do many naughty things that they would not be suspected of near their homes. I believe the closer we bring the legislation for localities to the home and fireside, the purer we make it for all. I would have this local legislation embrace all things that are not general. In effect, I would leave to the Legislature only *general* laws, and therefore, I would rather not specify any range of legislation over which local boards should have exclusive control, but would leave these boards to supervise and regulate all matters not capable of being placed under general laws. This, in my opinion, would force the Legislature to make general laws alone. I think, while local authorities could attend to all laws certified as special in their operation, such a decision by the Constitution that we are about to frame would embody a reform which must raise this Convention in the estimation of the people more than any amendment that shall otherwise be incorporated.

Mr. BERGEN—The gentleman from New York [Mr. Duganne], who last addressed you, states that the ghost of the old Constitution is continually rising up before us. Now what, after twenty years' experience, has been found to be proper? It is that the purity and light of the old Constitution ought to be continually before us as the guide for our action, from which we ought not to depart. The gentleman speaks about the purity of the boards of supervisors, that they have a lobby around them, composed of the people, to watch them. I have in my experience known around boards of supervisors a different lobby from that of the people, a lobby which operated by means similar to what I hear operations have been carried on in the Legislature of this State.

Mr. POND—Was that in Kings county?

Mr. BERGEN—Yes, that was in Kings county. There are corrupt men in Kings county as well as in the eastern and central counties of this State. I do not pretend to claim that they are immaculate, or all pure; evil exists everywhere. Now, sir, I hope that this Convention will adopt the amendment offered by the gentleman from Orleans [Mr. Church]. It is nearly in the language now contained in the old Constitution. That is the ghost the gentleman appears to fear so greatly. If this Convention requires from the Legislature of this State the passage of general laws upon all subjects on which general laws may be passed and enumerates those subjects in the Constitution (as they may be enumerated), they will cover almost all cases in which special laws are passed, and forbids the passage of special laws, in direct language, then there will be no occasion for specifying in the Constitution and fastening it there, what subjects should be given exclusively to boards of supervisors. Why, when I look on this article as reported by the committee, and at the subject over which they propose to give the boards of supervisors exclusive juris-

dition, it appears to me that there is hardly a subject they have named but what may be provided for by general law. For many of them there are now general laws. For instance, "the regulation and continuance of roads and public landings." We have laws in relation to public landings and roads. "Ferries and bridges, except over navigable streams." We have general laws on this subject. "The incorporation and discontinuance of macadamized and plank-roads." Upon this we have general laws. "Horse railroads;" we may not have general laws upon horse railroads, but it cannot be a very difficult matter, or require much skill to pass a general law in relation to horse railroads. "Raising money by levying a tax, for town, village, and county purposes;" certainly there can be no difficulty in passing a general law upon this subject. "The confirmation of the proceedings of town and village officers, other than judicial;" a general law certainly might be applied to these subjects. "Relief of county, town and village officers from the penalties incurred in the discharge or neglect of official duties;" "the formation of new towns and wards"—that is in the statute law now on our books. So there will be no occasion for boards of supervisors to act in the matter, only so far as is provided in the general law. These general laws would, in many cases, give power to boards of supervisors to act in the premises. Now, if I am right in my interpretation or in my view of the amendment offered by the gentleman from Orleans [Mr. Church], this whole matter is provided for. If this section, as reported by the committee, should become a law, it appears to me it would cause litigation without end. In this Convention there are some one hundred gentlemen of the legal profession, and hardly two agree upon the meaning of the section as reported by the committee. It is opening a door for litigation which I hope will be kept closed. I doubt the propriety of placing in the Constitution matters which even the legal gentlemen of the Convention cannot agree upon as to the meaning. It appears to me to be unsafe and unwise.

Mr. HALE—I move to amend as follows:

Insert after "State," in the third line, the words "in which boards of supervisors shall exist." Strike out the word "all" before "powers," in the fifth line, and insert "such additional." Strike out, "which can be safely confided to them," and insert "as may be deemed expedient." Strike out "such laws," and insert "laws conferring powers upon said boards." So that the section shall read—"The Legislature shall, at the first session thereof after the adoption of this Constitution, and from time to time thereafter, by general laws applicable to all the counties of the State in which boards of supervisors exist, confer upon the boards of supervisors of the several counties of the State such additional powers of local legislation and administration as may be deemed expedient; and during the continuance of laws conferring powers upon said boards, the powers therein conferred shall be exclusively exercised by said boards of supervisors."

Mr. Chairman, in explanation of this amendment, I wish to state with regard to the first part of it, it is contemplated, as I understand, by

the report of another committee, that the board of supervisors shall not exist in the city and county of New York. If such a provision should be adopted by this Convention, then it will be necessary to so qualify this section as to meet that emergency. In regard to the other amendment, my idea is this—certain powers are already conferred by law upon boards of supervisors. The amendment as adopted by the Convention provides that the Legislature shall, at its next session, confer all of a certain class of powers upon boards of supervisors. My amendment recognizes the fact that they are already possessed of certain powers, and merely requires the Legislature to confer upon them additional powers at the next session, and provides that during the continuance not only of those laws which they may pass, but during the continuance of all laws, whether already passed or to be passed, which confer powers upon boards of supervisors, those powers shall be exercised by them exclusively. These amendments are drawn to conform to the spirit of the amendment of the gentleman from Orleans [Mr. Church], but to obviate the necessity of the Legislature going over the whole ground, and re-conferring upon the boards of supervisors those powers they already possess.

Mr. FOLGER—I ask for a division, so that the question may be taken separately upon the first part of the proposition.

The question was put on the first part of Mr. Hale's amendment, to insert in the third line, after the word "State," the words "in which boards of supervisors shall exist," and it was declared carried.

The question then recurred and was put on the second part, to strike out all before the word "powers" in the fifth line, and insert "such additional."

Mr. CHURCH—I have not the slightest objection to inserting this amendment. I do not think the amendment changes the meaning of the amendment as adopted by the committee. Laws which exist now will exist after the adoption of this Constitution if not inconsistent with it, and those laws which now confer powers upon the boards of supervisors will remain in full force as they are, if not inconsistent with the amendment which is adopted by the committee. This provision, as I understand it, does not in any manner interfere with the existing laws conferring powers upon boards of supervisors. Yet I have no objection to these words.

Mr. HALE—My idea was this; that the latter part of the provision as adopted by the Convention provides only that the laws which the Legislature may make hereafter shall be exclusive while they are exercised. The amendment which I propose will apply to the provision of laws already existing as well as to those to be made hereafter.

The question was then put on the proposition to strike out before the word "powers" in the fifth line and insert the words "such additional," and it was declared carried.

The question was then put on the next proposition, to strike out the words "which can safely be confided to them," and insert in lieu thereof the words "as may be deemed expedient," and it was declared carried.

The question was then put on the next proposition, to strike out the words "such laws," and insert "laws conferring powers upon such board," and it was declared carried.

Mr. DUGANNE—I offer this amendment not for the purpose of having it argued, not in the hope of having it adopted, but in order that it may be brought up at another time.

The SECRETARY proceeded to read the amendment, as follows:

All ordinances (not embraced in general laws) which may from time to time be adopted by the boards of supervisors of a county for the regulation of its internal affairs, as herein provided, shall be final in their operation until five years after the adoption of this Constitution, and thereafter, unless prohibited or restricted by the Legislature.

The question was put on the motion of Mr. Duganne, and it was declared lost.

The question then recurred on the original proposition as amended.

Mr. PROSSER—I offer the following amendment, to be added at the end of the section.

The SECRETARY proceeded to read the amendment, as follows:

"But no power to borrow money without the consent of the legal voters in the county, unless for the anticipation of a tax, shall be so conferred."

The question was put on Mr. Prosser's amendment, and it was declared lost.

Mr. POND—I offer an amendment to come in at the end of the section.

The SECRETARY proceeded to read the amendment, as follows.

Add at the end of the section as follows:

"Boards of supervisors shall have power to correct erroneous and illegal assessments, and the refunding of moneys collected or paid on said assessments; but nothing herein contained shall abrogate any remedy therefor now existing or provided by law."

Mr. T. W. DWIGHT—It seems to me this is purely a legislative matter, which may be well left to the Legislature.

Mr. POND—That matter has been legislated twenty years. It was legislated last winter. Laws were introduced empowering the boards of supervisors to repay illegal assessments, which failed to pass the Legislature. If the power to pay back illegal assessments and correct them is a power which the boards of supervisors should possess, then I submit it is proper for this Convention to insert a clause to that effect in the Constitution. It is either right and proper that boards of supervisors should have that power, or it is not. If it is right, then this Constitution should have a clause containing that power in it, or it never will be given by the Legislature.

The question was put on the amendment of Mr. Pond, and it was declared lost.

The question was then put on the section as amended, and it was declared carried.

The SECRETARY then proceeded to read the seventh section, as follows:

SEC. 7. The board of supervisors of each county, a majority of whom shall constitute a quorum, shall under such general regulations as

may be prescribed by law, have exclusive legislative and administrative power over and superintendence and control of such local and internal affairs and fiscal concerns within their county as are not otherwise provided by this Constitution; including the establishment, construction, regulation and discontinuance of roads, public landings, ferries and bridges, except over navigable streams; the establishment, incorporation, regulation and discontinuance of plank, turnpike and macadamized roads and horse railroads; the raising of money by loan or tax for town, village, or county purposes; the confirmation of the proceedings of towns and incorporated villages, and of county, town, and village officers, other than judicial; the relief of county, town, and village officers (other than judicial) from penalties incurred in the discharge or neglect of official duty; the purchase, management and sale of real estate and personal property, for the use and benefit of the county; the erection of new towns and wards, changing the names thereof, and the alteration of town and ward boundaries; the widening, deepening, straightening, and cleaning of the channels of streams (except navigable streams), and the drainage of swamps and marshes; the correction of erroneous and illegal assessments, and refunding of moneys collected or paid on such assessments; the compensation of town and county officers, except supervisors, which shall be fixed by the Legislature; the care and support of town and county poor; together with such other matters of a local and internal character as the Legislature may prescribe; and also all other matters in regard to which boards of supervisors may have jurisdiction at the time of the adoption of this Constitution, subject to such changes and modifications as may thereafter be made by law, in accordance with this Constitution.

Mr. CHURCH—I suggest whether the section is not by the amendment which has been made, stricken out. That amendment was offered by the gentleman from Oneida as a substitute for section 6.

The CHAIRMAN—The Chair is of the opinion that under the rules under which we are acting the section is required to be read.

Mr. CHURCH—I move to strike out the seventh section.

The question was put on the motion of Mr. Church, and it was declared carried.

The SECRETARY then proceeded to read the eighth section, as follows:

SEC. 8. The county supervisor shall be president of the board of supervisors, and shall have all the powers and perform all the duties pertaining to the office of chairman of the board at the time of the adoption of this Constitution, and such as may thereafter be prescribed by law; provided, however, that he shall not be entitled to vote upon any question before the board, except in case of a tie, when he may give the casting vote. All acts and resolutions of the board shall, upon the passage thereof, and during the session of the board at which the same were passed, be signed by the president, with his approval or disapproval thereof; and no act or resolution thus disapproved shall be valid unless, up-

on reconsideration of the same, a majority of all the members elected shall agree to its passage, notwithstanding such disapproval.

Mr. MERRILL—I move to strike out the eighth section.

The question was put on the motion of Mr. Merrill, and it was declared carried.

The SECRETARY then proceeded to read the ninth section, as follows:

SEC. 9. The Legislature may, by law, provide for an increase and equalization of representation in the boards of supervisors, by an election of representative supervisors from towns, villages and cities, with such powers and duties as members of said boards, but not otherwise, as may be prescribed by law.

Mr. BALLARD—It seems to me that this section 9 cannot meet with the approval of the Convention, therefore, without taking any more time, I move to strike it out.

The question was put on the motion of Mr. Ballard, and was declared lost, on a division, by a vote of 36 to 44.

Mr. GERRY—I move that the committee rise, report the article as amended back to the Convention, and ask to be discharged from its further consideration.

Mr. FOLGER—I ask the gentleman if he will withdraw his motion for a moment.

Mr. GERRY—I will withdraw it at the gentleman's request.

Mr. FOLGER—I would like to inquire of the chairman of the committee why the third, fifth, sixth, seventh and eighth sections of article ten of the present Constitution were omitted from the report.

Mr. SMITH—In reply to the gentleman I would say that they were all included in this report as it was originally presented; not precisely in the same order in which they are found in the present Constitution, but great pains were taken to incorporate them systematically in the article reported. They have been stricken out by the Convention, and I do not know where they are now.

Mr. BARKER—I move to strike out the latter part of section 9. The object of this section was to equalize representation in the board of supervisors. A small town has one representative and a large town can have no more. I do not know that a constitutional provision is at all necessary, but I think it had better be done. I move to strike out all after the word "cities," in the fourth line.

Mr. VAN COTT—I move to amend the amendment by striking out of the section all that precedes the word "cities." My motion is to strike out the words to the effect that the Legislature may by law provide for the increase and equalization of the representation of the boards of supervisors. I offer this for the reason that I suppose the Legislature already has the power under the general grant of legislative power. If there is anywhere in the article on the power of the Legislature, as we have adopted it, or anywhere else in the Constitution, a restriction upon that power, then, of course, it would be proper to grant it specially. But if in the general mass of power granted to the Legislature, it already has power to do this, I do not see why we should add

the power by way of particular enumeration. I think it is open to many objections to grant by enumeration what we have already granted by general terms. If any gentleman will point out that there is any limitation elsewhere upon this general power, we may retain it; if not, it should be stricken out.

Mr. GREELEY—The reason for retaining the general power is that we had no knowledge that there is a section which prescribes the general powers and duties which may be granted. It may be overlooked when our Constitution comes into the hands of the Committee on Revision. If they find that this power is provided for elsewhere, they will, of course, strike it out here; they will take good care that we do not send to the people two grants of identical power. I think we should retain so much as the gentleman from Chautauqua [Mr. Barker] proposes to retain. The latter part of this section—that part which he proposes to strike out—seems to me entirely irrelevant to the general purposes of this section, and not germane to what precedes it. I trust, therefore, that the amendment of the gentleman from Chautauqua [Mr. Barker] will be adopted, and that of the gentleman on my left [Mr. Van Cott], rejected. I might have risen to a question of order, but that is not my habit, that this committee has just voted that it will not strike out this section; yet the gentleman rises to move an amendment, which, if adopted, will strike out the section.

Mr. VAN COTT—I propose to strike out one-half of the section; the gentleman from Chautauqua [Mr. Barker] proposes to strike out the other half; and the point of order I think is not valid on my motion to strike out the last half. I seem to have been misunderstood by the gentleman from Westchester. My proposition was this: in the general grant of power is included the power to pass a particular law, and therefore the committee should not by enumeration grant the power to do the same thing.

The CHAIRMAN—The Chair is of the opinion that there may be some question in the matter, therefore he will not decide, but leave it to the committee to decide whether they will strike out the first half.

Mr. GREELEY—The committee has just decided, by a positive vote, not to strike out the section. The gentleman on my right [Mr. Barker] moves to strike out part of the section, which motion I supported. The gentleman on my left [Mr. Van Cott] moves, as an amendment to this amendment, to strike out the rest of the section. Now, I hold such an amendment to the amendment not in order. When the former amendment shall have been voted upon, a motion to strike out the rest will be in order. But it is not in order as an amendment to the motion of the gentleman from Chautauqua [Mr. Barker].

The question was put on the motion of Mr. Van Cott, and, on a division, the vote stood 34 to 39.

SEVERAL DELEGATES—There is no quorum voting.

The CHAIRMAN.—The Chair is of the opinion there is a quorum present, and gentlemen will please vote.

Mr. HALE—I trust that this committee after

having voted by a large majority against striking out the section will not be guilty of the absurdity of striking out that portion of it, which will leave the residue entirely unmeaning and senseless.

The question was put again on the amendment of Mr. Van Cott, and, on a division, it was declared lost, by a vote of 39 to 49.

Mr. COOKE—I move to amend the amendment by substituting for this section the third, fourth, fifth, seventh and eighth sections of Article 10 of the existing Constitution.

The SECRETARY proceeded to read the third, fourth, fifth, seventh and eighth sections, as follows:

SEC. 3. When the duration of any office is not provided by this Constitution, it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment.

§ 4. The electing all officers named in this article shall be prescribed by law.

§ 5. The Legislature shall provide for filling vacancies in office, and in case of elective officers no person appointed to fill a vacancy shall hold his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.

§ 7. Provision shall be made by law for the removal, for misconduct or malversation in office, of all officers (except judicial) whose powers and duties are not local or legislative, and who shall be elected at general elections, and also for supplying vacancies created by such removal.

§ 8. The Legislature may declare the cases in which any office shall be deemed vacant, when no provision is made for that purpose in this Constitution.

Mr. COOKE—I have omitted section 6 because the beginning of the political year was provided for in the article on the organization of the Legislature. I offer this amendment upon the ground stated by the gentleman from Kings [Mr. Van Cott], that this matter of increasing representation in the board of supervisors is no more proper to be incorporated in this Constitution than is the election of supervisors of the town. When the Legislature set themselves about organizing the board of supervisors, or directing the election of supervisors of the towns, they can then apportion the representation so as to make it equal. I can see, so long as there is no provision of the Constitution directing the election of supervisors in the town, no reason for incorporating a provision directing an increase of representation.

Mr. BARKER—The sections which have been read are very appropriate constitutional provisions, but they in no wise pertain to the report which we are considering. They are more appropriately considered by the Convention after the main articles of the Constitution are framed. Many of the specific provisions of the Constitution will provide for the election of officers to fill the vacancies when the political and financial year shall begin. I suggest it is not appropriate for this committee to consider the subjects embraced in these several sections. I hope they will be voted down. They are only suggested here, I apprehend, because they appear in the

present Constitution, in the article which we are now considering. Therefore, I submit, as a question of order, they are not pertinent to the report of this committee, as not having been referred to it. I make the question of order that we are considering the report of the Committee on Town and County Officers, other than Judicial, their election, appointment, tenure of office, compensation, powers and duties. None of the subject-matters mentioned in these several sections are in this report.

The CHAIRMAN—The Chair is of the opinion that the point of order is well taken.

Mr. SMITH—Is it not worth while to inquire whether the article is perfect as it now stands, with certain provisions stricken out, and nothing substituted? The gentleman from Ontario [Mr. Folger] could have answered his own question if he had taken the trouble to read the report through. The report seems to have been discussed and amended without being read through and examined in its connections. Now, if the committee will indulge me for a single moment I will endeavor to explain it to the committee. The design was simply to present in one article, a perfect system. It is very simple: whether it is wise or not is another thing. If gentlemen will cast their eyes over it, they will see that section one provides for county officers. Section two provides for the district attorney, making the office appointive, instead of embracing it among general county officers in section one, which are elective. Section three provides for town officers. Section four embraces those matters to which the gentleman from Ontario [Mr. Folger] alludes. They ought to be provided for somewhere in the Constitution. Section five provides for the residence of town and county officers in their respective localities. That is not, perhaps, very important, although many of the Constitutions of the United States have similar provisions. Section six provides for the organization of the county board of supervisors. That is not provided for in the present Constitution, but the existence of boards is merely recognized. This provision is not, perhaps, absolutely necessary, but it was thought desirable that the Constitution should present a perfect system. Section seven prescribes the powers and duties of that board. Section eight prescribes the powers and duties of county supervisors. Section nine provides that the Legislature may increase and equalize the representation in boards of supervisors. This section was necessary in connection with other provisions of the article. Other sections had prescribed the number and organization of the board, so that there would be no power in the Legislature to increase the number or equalize the representation. But inasmuch as the other sections have been stricken out, and the symmetry of the plan entirely destroyed, there may be no reason for retaining this section. Upon that matter I will not speak. The object of it will be apparent when it is taken in connection with the other sections of the report. I will simply say that the committee reported this provision for the reason that there had been great complaint made about inequality in the boards. We have instanced one or two cases in our report. Take

the town of Watervliet, where there is a population of 27,000; they have but one representative in the board, whereas there are some three or four towns in the same county, each with a population of 3,000, which have a representative and equal authority in the board with the populous and wealthy town of Watervliet. This inequality exists to a great extent in all the counties. It was thought if a larger power was devolved upon the board, this inequality would be felt more sensibly, hence this section was reported. I have made this explanation because it seems that the general plan and purpose of the report was not understood.

Mr. GREELEY—I move to strike out the word "representative," in the third line, and insert the word "additional." We have not misunderstood this section, and we have not failed to read the report. The simple fact is that the section, as drafted by the chairman, was pertinent to a state of things which this committee have decided not to create, therefore it needs changing here. The word "additional," in place of the word "representative," is required to enable the Legislature, if they shall see fit, to give to the town of Watervliet, for instance, three supervisors. If gentlemen wish to make what I might reverently call "one-horse supervisors," who are neither supervisors nor anything else, but a sort of extra legislators, they can do so. But if they decide not to have that kind of officers, and choose to give the power to make additional supervisors, the same as any other supervisors, let them strike out the word "representative" and insert "additional." Then the amendment of the gentleman from Chautauqua [Mr. Baker] to the section will be perfectly coherent with the action of the committee up to this time.

Mr. BICKFORD—It is well known that supervisors have certain duties to perform in their towns, and also as members of the board. It was felt by this committee that it was necessary to keep the administration of their affairs in towns in the hands of one man, but there might be needed equalization in the boards, and therefore they provided for representative supervisors to sit in the boards, but to have no power in the boards, That was the idea. This was found to be a grievance in the towns.

Mr. S. TOWNSEND—It is easy to see the propriety of adopting some such mode of equalization of the representation of the several towns. I would merely remind the committee that a day or two since, my colleague upon this floor [Mr. Wickham] stated that the towns in his county showed a great disparity in their population, and yet each one was entitled to a supervisor. The census before me shows that one of those towns has a population of 517 inhabitants, and they elected a supervisor, while the largest town is shown to have 10,100 inhabitants in the same county. Some directory action should be had in this body to correct such incongruities as my colleague [Mr. Wickham] spoke of the other day.

The question was put on the amendment of Mr. Greeley, and it was declared carried.

The question then occurred on the amendment of Mr. Barker, to strike out all after the word "cities" in the fourth line of the ninth section, and

it was declared carried, on a division, by a vote of 39 to 33.

Mr. BALLARD—The amendment just adopted, asked for by the gentleman from Westchester [Mr. Greeley], strikes me as very proper. In that section it is provided that the Legislature may, by law, provide for a new basis of representation in the board of supervisors, "by the election," as it now reads, "of an additional supervisor." therefore two supervisors may be elected in one town; and it is necessary that the Legislature should also have power to prescribe what shall be the duties of this additional supervisor, to wit; that he may sit in the board and there discuss and vote, while as representative of the town the other supervisor, the supervisor proper, represents the town in all other respects. That is, as I understand, the effect of the amendment. Hence, in order to preserve the symmetry of the section, this other clause should remain in, so that the power of the two supervisors shall be well defined and understood, and their proper spheres of duty well marked out. It seems to be that it ought to be retained instead of stricken out.

The question was again put on the amendment of Mr. Barker, and it was declared lost, on a division, by a vote of 20 to 61.

Mr. GERRY—I now renew my motion that the committee rise, report the article as complete, and ask to be discharged from its further consideration.

Mr. SEYMOUR—I ask the gentleman to withdraw his motion for one moment. I think there is a slight amendment necessary to make this complete.

Mr. GERRY—I will withdraw it.

Mr. SEYMOUR—As the section now stands, I think there are three words toward the close of it which should be stricken out—the words "but not otherwise," so that it will read, "with such powers and duties, as members of said board, as may be prescribed by law." I move to strike out those words. They seem to be useless, if not inconsistent with the other phraseology of the section. Then it will stand that these additional supervisors shall have "such powers and duties as may be prescribed by law," leaving the Legislature to define them.

Mr. SEAVER—I trust the motion of the gentleman from Rensselaer [Mr. Seymour] will not prevail. The duties of the office of supervisor are well known and well defined by our existing laws. It seems to be desirable that this Convention should continue these duties in coming time, identically as they stand at present. The object of this section is to create an additional supervisor, who shall have the right, and whose duty it shall be, to sit in the board of supervisors, as a member of that board, to take part in all its deliberations, in regard to the equalization of assessments and the levying of taxes, and the passage of resolutions by the board. This is just and proper, as the chairman of the committee [Mr. Smith], who reported this article, has shown to this Convention. Now, this additional supervisor should not be allowed to interfere in other matters pertaining to the office of supervisor. He should be denominated in the law an "additional

supervisor," so that he shall be known as such, and not be permitted to come to the office of the supervisor and meddle with the general affairs of the chief officer of the town; and the words "but not otherwise" limit his duties in such a manner that it will always be known what he is there to do, and what he is elected for. If you strike them out, it may be left in doubt whether he is to have concurrent power with the chief supervisor of the town or not. As the section now stands, there is no question about it. His duties are as a member of the board, "but not otherwise." I hope the section will be allowed to stand as it now reads.

Mr. SEYMOUR—The fact is as the gentleman who has just spoken says. There are certain duties—and they are very important duties too—which, by law, are devolved upon the supervisor of a town, and which he exercises alone in the character of sole representative of that town. Now, we have provided that the Legislature may increase the representation of large towns, so that there may be two, or perhaps more than two supervisors. The object of the amendment is to leave to the Legislature itself the prescription of the duties that shall devolve upon the supervisor. If it is, in the opinion of the Legislature, desirable that one supervisor, in a large town, shall exercise all the duties which have been devolved upon a sole supervisor, and that the other, or the other two, shall merely have seats in the board, let that be provided by proper legislation and be regulated by law. It is for that purpose that I proposed the amendment, so as to leave this matter, which may enter into details, in some measure, to the regulation of the Legislature.

Mr. RUMSEY—Is an amendment now in order now?

The CHAIRMAN—The Chair is of the opinion that it is.

Mr. RUMSEY—I offer the following amendment as a substitute for the section:

"There shall be elected in each county of this State, three county assessors, who shall hold their office for three years, whose duty it shall be to determine and establish the relative value of the real estate of each of the towns of said county, whose determination in regard to such value shall be conclusive upon the boards of supervisors in all cases relating to the assessment of taxes in said county."

As I understand it, there is but one case where there is any occasion for having a more equal representation in the board of supervisors, and that is when you come to determine the relative value of the lands in the several towns, so that the taxes may be fairly apportioned among the several towns in the counties. This relates only to the taxes assessed for State and county purposes. It makes no difference what value the land is assessed at, so far as relates to the town expenses, for they are properly chargeable upon the town only. It seems to me that it will be found extremely cumbersome and unnecessary to undertake to make a relative apportionment of the supervisors, according to the population of the several towns, and create for that purpose a number of other supervisors, who will have no duties

to perform save this, nothing being required except the mere equalization of the value of the land; by selecting three county assessors, who shall settle and determine upon this question, you will make it a plain and easy road to travel, and avoid a vast deal of bickering and contention, and log-rolling, that now occurs in the board of supervisors.

Mr. S. TOWNSEND—The difficulty is this: we have voted down a very reasonable proposition of the committee that the office of "county supervisor" should be created, mainly on the ground of increasing the public expense. My friend [Mr. Rumsey] wants to increase it still more, and give us one hundred and eighty new officers.

Mr. RUMSEY—Will it be any better to make fifteen or twenty supervisors in a county than to make three county assessors?

Mr. MASTEN—I see the amendment does not include cities, and so I have nothing to say about it.

Mr. GREELEY—I ask whether it is in order to move to strike out a section, and insert this as an additional section? How is this germane to this matter which is proposed to be stricken out?

The CHAIRMAN—The Chair is of the opinion that it is a matter for the committee to decide, whether this equalization shall be performed by the supervisors of the towns or by the assessors, to equalize for the towns of the county. It is for them to decide.

Mr. POND—I am opposed to this proposed substitute. The evil to be guarded against now is that a town—if there is such an one in the county—that pays a fifth, or other large proportion of the tax of the county, may be assessed in an undue proportion, in consequence of not having a proportionate representation in the board. Now, the proposition of the gentleman from Steuben [Mr. Rumsey] would take three gentlemen in the county and have them elected to perform this duty of equalizing the assessment for such county. I suppose, under that system, those three gentlemen would take good care that their own towns were protected in that assessment, just as the State officers who are appointed to equalize the assessment look after the interests of their respective counties in performing their duties. It seems to me that this proposition would increase the evil, rather than correct it. I think we had better have representatives according to the population, and let the board of supervisors perform that duty, and not select three men who are residents of the county (unless you provide they shall be men who do not reside in the county), and who will take care to impose the large proportion of the taxes or make the assessment, so that the taxes, most of them, will be imposed on the towns in which they do not reside. The only mode, as I apprehend, to correct the evil, is the one provided by this committee—to have representation in the board constituted according to the population, or such a representation provided as shall approximate to that.

Mr. A. F. ALLEN—I do not agree with the gentleman from Steuben [Mr. Rumsey]. There is no mode of redress in it if you give three men this power; but if you submit it to the board of supervisors, then, if there is an error or a wrong committed, if any locality in the county is injured

they can correct it by their votes, because the equalization report is submitted to them, and if they are not satisfied they can change it. But in this proposition there is no opportunity for redress. You may go on and elect three men as officers in the county, as the gentleman from Saratoga [Mr. Pond] remarked, and they may take good care of their own locality and neglect others, and there is no chance for redress.

The question was put on the amendment of Mr. Rumsey, and it was declared lost.

The question was then announced on the amendment of Mr. Seymour.

Mr. SEYMOUR—I wish to embrace in my amendment the words of the committee, "such power and duty," and to strike out the words "as members of said board, but not otherwise." That leaves the whole to be provided by law—all the duties of these additional supervisors—whether they are duties in the board or out of the board, as supervisors. That presents the whole proposition. It is thought by some members that that is desirable. I modify it in that way.

The question was put on the amendment of Mr. Seymour, and it was declared carried.

Mr. GERRY—I renew my motion that the committee rise, report the article as complete, and request to be discharged.

The question was put on the motion of Mr. Gerry, and it was declared lost.

Mr. C. C. DWIGHT—I have an amendment to the ninth section which I wish to offer.

Mr. ALVORD—I also have an amendment to the ninth section, which I wish to offer. We have now gone on and altered this ninth section since the motion was made to strike it out and it failed. I am entirely convinced, as has been said by the gentleman from Kings [Mr. Van Cott], that this power now resides in the Legislature of the State, and therefore there is no necessity whatever for the insertion of a proviso that the Legislature may. If gentlemen desire to have any efficiency in it, let them strike out "may" and insert "shall." But inasmuch as it is evident that they only desire to call the attention of the Legislature to the fact that they have such power, I move now that the ninth section, as amended, be stricken out.

Mr. LAPHAM—I would suggest, in favor of this disposition of the matter, that the committee, in recommending this ninth section, had in view the general scheme contained in their report, to erect local legislatures, to have a veto power by the county officers. The committee have stricken out, in substance, the whole policy upon which the ninth section was based, and have left the board of supervisors constituted as they now are, with the general powers they now exercise. I trust, therefore, that this section will be stricken out as entirely useless.

Mr. MASTEN—I offer the following amendment as a substitute for the ninth section:

"The Legislature shall prescribe the number of supervisors to be elected in the several counties of the State, and shall apportion them among the towns and wards in the county according to their respective population."

Mr. E. A. BROWN—It seems to me that the same reason exists for opposing that amendment,

as exists for favoring the amendment of the gentleman from Onondaga [Mr. Alvord].

Mr. RATHBUN—I rise to a question of order. It is that the motion of the gentleman from Onondaga [Mr. Alvord] was to strike out section 9. I believe that is not amendable.

Mr. CHAIRMAN—The Chair is of the opinion that the point of order is not well taken. We must endeavor to perfect the section before it is stricken out.

Mr. E. A. BROWN—All I desire to say is that I am entirely satisfied that the Legislature shall have the power that would be conferred by this ninth section, in any form in which it may be put. And I rose to move a reconsideration of the other vote, supposing it was necessary; but it is not necessary, and I am decidedly in favor of the motion to strike it out. Otherwise, we have a special provision giving the Legislature the power that they already must have as a Legislature, having the legislative power of the State. It is unnecessary, and would only incumber it with too much detail.

Mr. CHURCH—I hope the amendment offered by the gentleman from Erie [Mr. Masten] will be adopted. It strikes me that the same objection does not exist to the substitute, as to the section as it now stands. It may be that the gentlemen who oppose this section as it now stands, as a legal proposition, are right, and that the Legislature already possesses the power proposed to be conferred upon them by this section; although I think there is an opportunity to claim that in another section of this article it is provided that the Legislature shall confer certain powers upon the boards of supervisors, which refers to the boards of supervisors as they are now organized, and that the Legislature may not have power to change the organization of these boards. But the substitute introduced by the gentleman from Erie [Mr. Masten] introduces a new, and at the same time a very valuable principle, and it is this; that the representation of the board of supervisors shall be according to the population of the respective towns. Now, we all know the representation as it now exists is very unequal, and operates very unjustly. A town of say 10,000 inhabitants ought to have more representatives in the board of supervisors than a town of 2,000 inhabitants; and it is more in accordance with the principles of our government. It is in every respect, it seems to me, eminently proper and just; and I hope, therefore, that the substitute offered by the gentleman from Erie [Mr. Masten] will be adopted, making it obligatory upon the Legislature to apportion the supervisors according to population.

Mr. HARDENBURGH—I am in favor, sir, of the principle of the amendment of the gentleman from Erie [Mr. Masten]. The evil of the present system is quite well illustrated in the county which I have the honor partially to represent here. One of our towns has a voting population of about 4,000, another one not quite 100; and the latter has the same representation in the board of supervisors as the former. I should think it desirable that it should be provided likewise in this amendment that each town or corporate body now known to the law should have at least one repre-

sentative. If that is admissible as we are now situated, I am entirely willing to adopt this proposition.

Mr. ANDREWS—I am disinclined to support such a proposition as is contained in the amendment offered by the gentleman from Erie [Mr. Masten], and it is not because I do not appreciate the fairness of the principle upon which the proposition is based. I come myself from a county and from a section of a county in which there is a dense population, and which has a very unequal representation and voice in the board of supervisors. And it has been, from time to time a matter of complaint that that inequality exists, and especially upon questions of equalization of taxation, where the interests of the city and county are very likely to be adverse. But, Mr. Chairman, I do not think it would be wise to disturb the traditions of our people in respect to the board of supervisors and the arrangement of the duties of the supervisors in the several counties in the State. As we all know, there are a large number of statutes imposing duties upon the supervisors of towns not acting in their capacity as members of the board of supervisors, and such a change as this, which would involve a double representation, at least from the towns in the State and in the counties and in the wards in a city, would require the re-adjustment of a great many statutory provisions based upon the fact heretofore existing that there was but a single representative from a town. And, moreover, Mr. Chairman, there is a way in which this equality may be essentially produced. Wards in cities may be created by the division of large wards, and then, under existing laws, each additional ward is entitled to an additional representative, and towns may be divided. I think it would be unwise at this time to make this change by a provision in the organic law. The Legislature has full power and jurisdiction over the subject, and it seems to me it had better be left to the Legislature, supported by public opinion which may be created upon this subject, to adjust whatever real difficulties now exist rather than to embody this principle in the Constitution, which may not be altered for twenty years.

Mr. BERGEN—I agree with the last speaker who has addressed the Convention upon this point. I think it is wise to leave it to the Legislature, and it ought to be left to them. Now, sir, in a town it is necessary, certainly, to have one supervisor. He is the principal officer of the town; he may be said to be at the head of the town government. Town duties which it is necessary to perform are performed by that officer. If the principle proposed to be adopted by this amendment should pass this committee, and become a part of the organic law of this State, you would yet be compelled to provide that each town should have one supervisor? In the county of Kings there are towns which have a population of less than two thousand, with a population in the county of about four hundred thousand. If you take two thousand as the basis to entitle a town to a supervisor, you will have a board in that county composed of two hundred members, an unwieldy

board which would cost the county a large sum of money to pay their salaries or their *per diem*. There is no public hall in the county sufficiently large to accommodate them; they would be compelled to build a new one. For this Convention to establish a principle in that way seems to be very unwise. If this principle is adopted in relation to boards of supervisors, it should be adopted in relation to common councils. Take wards, for instance. Each ward in a city has one representative. Now, wards in the city of Brooklyn differ very much in population. If my memory is correct, some have three times more population than others; if this principle is adopted a new division would have to be made at every census, to equalize the representation. To give one ward one alderman, and another, with a larger population, three or four, destroys the theory of our whole system. The effect of it we cannot conceive. It seems to me, therefore, that it would be very wise, and very proper, to leave it to the Legislature, as it has been left heretofore. If there are any inequalities, they have it in their power to remedy them. I hope, therefore, that the proposition now pending will not be adopted.

The question was put on the amendment of Mr. Masten, and it was declared lost.

The question then recurred on the motion of Mr. Alvord, to strike out section nine, and it was declared carried, on a division, by a vote of 40 to 33.

A DELEGATE—There is no quorum voting.

Mr. WALES—I rise to a point of order. The question has been put once before, and voted down.

The CHAIRMAN—The point of order is not well taken.

The question was again put on the motion of Mr. Alvord, and it was declared carried, on a division, by a vote of 49 to 41.

Mr. HARRIS—I offer the following amendment:

In section one, after the words "acts of the sheriff," insert as follows; "district attorneys, while in office, shall be ineligible to any other office."

The committee have decided that the district attorneys shall be elected. I regret that, sir, but if they must be elected, then I trust that they shall be declared ineligible for any other office while they are in that position, so that they shall not use it as a means for obtaining any other office.

The question was put on the amendment of Mr. Harris, and it was declared carried, on a division, by a vote of 63 to 30.

Mr. ALVORD—I move that the committee rise, report this article to the Convention as complete, and recommend its passage.

The question was put on the motion of Mr. Alvord, and it was declared carried.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. BELL, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on Town and County Officers, etc., had made some amendments thereto, and had instructed their chairman to report the same back to the Convention as amended, and recommend its passage.

Mr. HALE—I move that the article, as reported by the committee, be printed, and that the consideration of it be postponed until the evening session.

The question was put on the motion of Mr. Hale, and it was declared carried.

Mr. ALVORD—I move that the Convention do now take a recess until half-past seven o'clock this evening.

Mr. GREELEY—Will be gentleman withdraw his motion for a moment?

Mr. ALVORD—Yes, sir.

Mr. GREELEY—I wish to know, simply, whether the rule that we be confined to five-minute speeches is operative. If not, I wish to move it.

The CHAIRMAN—It is operative.

Mr. CLINTON—One of my family is ill, and I ask indefinite leave of absence.

There being no objection, leave of absence was granted.

Mr. SPENCER—I ask for leave of absence until Wednesday next, on account of illness in my family.

There being no objection, leave of absence was granted.

Mr. GOULD—I ask leave of absence for Mr. Axtell, until Tuesday next, on account of illness in his family.

There being no objection, leave of absence was granted.

Mr. REYNOLDS—I ask leave of absence for Saturday and Monday next.

There being no objection, leave of absence was granted.

Mr. ALVORD—I now renew my motion to take a recess until half-past seven o'clock.

The CHAIRMAN put the question on the motion of Mr. Alvord, and it was declared carried.

So the Convention took a recess until half-past seven.

EVENING SESSION.

The Convention re-assembled at half-past seven, when the proceedings were resumed.

Mr. ALVORD—I believe that the pending question, when we took a recess, was on agreeing with the report of the Committee of the Whole. I had the honor of moving in Committee of the Whole that the committee rise and report the article to the Convention. The Chairman of that committee, following the usual formula employed in the Legislature, made a report that the committee had risen, and had directed him to report the article to the Convention and recommend its passage. I move, sir, to strike out the words "recommend its passage" from the report of the Chairman of the committee.

The PRESIDENT—The Chair understands the fact to be as stated by the gentleman from Onondaga [Mr. Alvord]. If there is no objection the Journal will be so corrected.

The PRESIDENT announced the pending question to be on agreeing with the report of the Committee of the Whole on the article reported by the Committee on Towns, Counties, etc.

The SECRETARY proceeded to read the first section reported by the Committee of the Whole, as follows:

SECTION 1. Sheriffs, clerks of counties, including the register of the city and county of New York, coroners and district attorneys, shall be chosen by the electors of the respective counties once in three years, and as often as vacancies shall happen. Sheriffs shall hold no other office, and be ineligible for the next three years after the termination of their offices. They may be required by law to renew their security from time to time, and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff. District attorneys, while in office, shall be ineligible to any other office. The Governor may remove any officer in this section mentioned, within the term for which he shall have been elected, giving to such officer a copy of the charges against him and an opportunity of being heard in his defense.

Mr. VEEDER—I move to amend in the fourth line, after the word "in" and before the word "three," by inserting the word "every," so it will read as it does in the present Constitution, "every three years."

The question was put on the amendment of Mr. Veeder, and declared carried.

Mr. VEEDER—I move to amend the second line by inserting after the words "New York," the words "and the register of the county of Kings." As I understand it, at the time of the adoption of the Constitution of 1846, the register of the city and county of New York was an established office, and the framers of the Constitution saw fit, in order to avoid any question, to recognize that office, as did the Convention of 1821. Now we have in the county of Kings an independent office known as register of the county of Kings. That is an office recognized by law and in existence. If there is no provision in the Constitution recognizing that office, there may be some question about it being a county office. I therefore respectfully ask that the amendment be made.

Mr. TAPPEN—There are other registers of counties besides those of Kings and New York. The office of register of Westchester county was created by act of Legislature in 1858. I think clerks and registers of counties would be the proper amendment, if it will be acceptable to the gentleman.

Mr. VEEDER—I accept the amendment.

Mr. HUTCHINS—I hope that amendment will not be adopted, for it may be proper hereafter to put the business back in the hands of the county clerk in some of these counties.

Mr. VEEDER—If there is any such objection, then I prefer my first amendment. The office is a very important one in the county of Kings, and the business transacted in it is very extensive.

The question was put on the amendment of Mr. Veeder, and it was declared carried, on a division, by a vote of 50 to 23.

Mr. ALVORD—There is no quorum voting.

Mr. FOLGER—I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. TAPPEN—Does the motion include the amendment I offered?

The PRESIDENT—The Chair understood the gentleman from Kings [Mr. Veeder] to accept the

amendment of the gentleman from Westchester [Mr. Tappen].

Mr. VEEDER—I said that if there was any opposition evinced to the gentleman's amendment, I desired to withdraw my acceptance.

Mr. ALVORD—The city and county of New York is an exception in the way of population and wealth to any other county in the State of New York. The duties of the clerk of that city in regard to matters within the county, if added to those of the register of deeds, within that county, would be more than one person possibly could perform. It may be found from time to time as the counties of this State increase, that the duties of the clerks of counties must necessarily be divided and another officer created to take part of those duties upon him. It may be that in the past, in the wisdom of the Legislature in certain counties of this State, that an apparent necessity of that kind existed; it may be true that that apparent necessity is a real necessity in the county of Kings; it may be also in the county of Westchester.

Mr. CONGER—There is no doubt about it.

Mr. ALVORD—It may be true in other counties of this State; but it seems to me, with the light of experience and knowledge we have on this subject, other than the assertion of individuals representing particular counties, we should leave to the Legislature the exercise of the power which they clearly have in making these new officers wherever the exigency shall arise, and the retaining those which they have made by legislative authority where they now are if that necessity continues to exist. It is impressed upon us beyond any doubt that so far as it regards the city and county of New York, there is an absolute necessity that is so plain and apparent to the comprehension of every member of this Convention that we do not hesitate to retain it in the Constitution; but before we shall have had other light and other experience in regard to that which the Legislature has seen fit to do in the arrangement in reference to the counties of Kings and Westchester, and possibly some other counties in the State, we had better leave it where it has been left in the past, to the Legislature, to determine the question whether that necessity shall continue to exist; and as long as it shall so continue to exist, they will continue to keep that office in existence. Now, sir, I do not, as the gentleman from Kings [Mr. Veeder] has undertaken to remark, believe that by refusing to impress upon this Constitution this officer in the city and county of New York, and leaving the matter in regard to the other counties in abeyance so far as the Constitution is concerned, that we constitutionally legislate the register of the county of Kings or Westchester out of office. We leave them where the law leaves them; we leave them where they shall be amenable to legislative action, and we can safely do so, because we have not had from the county of Kings, except through its representative here, springing up at this time to speak upon this floor, nor from any other portion of the State, any idea of the necessity of placing in the Constitution, as a constitutional officer, any such man as a register. I hope, therefore, under the circumstances, that the Constitution of 1846, so

far as this matter is concerned, will be left, and that the question of registers and their continuance in office in these other places in the State will be in the power of the Legislature.

Mr. VEEDER—Mr. President—

The PRESIDENT—The gentleman from Kings [Mr. Veeder] has already spoken once on this question, and cannot speak again unless by unanimous consent.

Mr. FOLGER—I object.

The PRESIDENT—The gentleman cannot proceed.

Mr. BARNARD—Mr. President, when the city and county of New York had a population of 120,000 the Legislature created the office of register of deeds separate from that of the county clerk. In 1853, when the population of Kings was 200,000, the business of the office of the county clerk had so increased that the Legislature separated that office into two and created the office of register of deeds. Now we have a population of more than 400,000—more than three times that of the county of New York when the office of register of that county was established, and in 1846 the Constitutional Convention recognized the existence of that office in New York. Since 1846 the population of Kings county has so increased that the business could not have been done well by the clerk of the county of Kings, and hence the creation of the office of register. I think the population of the county of Westchester has increased to over 100,000, and they have established the office of register there. Now, these offices being in existence, and elected at the same time and in the same manner as the office of county clerk, why not recognize them in the Constitution as well as the county clerks? It does not prevent the Legislature hereafter, in other counties, creating a separate office; but these offices are in existence, and we claim that they shall be treated as constitutional offices the same as that of clerk of the county. In fact, in both of these counties I think they are more important than the clerks of the counties; they have more to do; the emoluments of the office are greater and the responsibility is also greater than that of the office of clerk of the county.

Mr. VAN COTT—I unite in the universal expression in supporting this amendment if you retain the provision in relation to the city of New York. I do not myself see the necessity of making the office of register a constitutional office, but if you make it a constitutional office in New York you should in Brooklyn. Let me state as a fact, in addition to what has already been stated, that the volumes of conveyances in that office now exceed one thousand. It will give you some idea of the magnitude of the business of the office.

Mr. VEEDER—Much more.

Mr. VAN COTT—I speak now of conveyances, and in addition some seven hundred volumes of mortgages. The city of Brooklyn to-day is growing at a more rapid rate than the city of New York, because it has a larger area for growth. Its population is also increasing in a very great ratio. I ask, therefore, with the members from Kings, that you include the office of register in Brooklyn, if you include that office in the city of

New York, although I shall be very willing to have that in the city of New York stricken out as a constitutional office.

Mr. BERGEN—I hope the office of register will be continued in the county of Kings the same as it is in the county of New York. I can recollect when New York county had a population of only 96,000, Brooklyn 5,000, and Kings county a little over 10,000. New York county has now probably a million, Kings county 400,000—nearly half the population of New York. Individuals are now living, in my judgment, who, by reason of the rapid increase of population, will see more population in Kings county than in the city of New York. Take the ratio of increase as a guide—take the last ten or twenty years—and before twenty years expire probably the population of Kings county will equal the population on Manhattan Island. Now, sir, if there is a necessity for a constitutional recognition of the office of register in the county of New York, certainly it must be necessary in the county of Kings, taking into consideration the vast interest and amount of business transacted in that county.

Mr. SEAVER—I offer an amendment to the amendment.

The SECRETARY proceeded to read the amendment as follows:

Strike out the words "register of the city and county of New York," in lines one and two, and insert in lieu thereof the words "register of deeds in all counties where such registers are now or may hereafter be authorized by law."

Mr. VEEDER—Now, sir, in regard to the recognition in the Constitution of the office of register in the county of Kings, I desire to say this. In 1821, when the Convention recognized in the Constitution the office of register in the city and county of New York, the population of the county of New York was less than 200,000; our population is put down by the census of 1865 at 310,000, while the fact is that our actual population is over 400,000. The office of register in the city and county of New York was created in 1812, when the population of New York was less than 150,000. The county of Kings does not mean simply the city of Brooklyn, but we have several towns there in connection with it. Its population in 1855 was 216,000; in the ten years thereafter it had increased over 100,000 in population according to the census. It must be evident to every mind that our city is destined to be one of the largest cities in the United States. I submit, sir, that in order to avoid any possible error or confusion, in regard to this office in our county, the recognition of the office of register should be provided for in the Constitution. I cannot see any possible objection to it. No gentleman will suppose that the Legislature will ever endeavor to abolish the office of register in Kings county. The remarks of the gentleman from Onondaga [Mr. Alvord], as to the necessity for an independent office of register in the city and county of New York, are equally applicable to the county of Kings. It would be impossible for one officer to perform the duties of the office of clerk and that of register in the county of Kings. We have an independent office now, by an act of the Legislature of 1852, the duties of which

take the whole time of the officer filling it. Therefore, to avoid all possible confusion, I hope the amendment offered by myself will prevail.

Mr. CONGER—The argument of the gentleman from Onondaga [Mr. Alvord], on this question, seemed to be based on this assumption, that things in the State of New York can go backward, that though population may increase and property be developed from year to year, and the necessities of registry increase in consequence of the distribution of property, still a time may come when the tide must sweep backward, and the Legislature be obliged, after having first established a registry as a separate office in a county, to revoke its action and declare that office null and void. Now, in regard to the county of Westchester, this, sir, is simply impossible, because there is no county in the State besides the counties of New York, Kings and Erie, that is developing as rapidly as that county; and the title to property in that county to-day, by subdivision, passes almost as frequently, and the necessity for a register as great as it is in the county of New York. I hope, therefore, there will be no difficulty in passing the proposition, and making the amendment "clerks and registers of counties."

Mr. FOLGER—The three gentlemen from Kings who have spoken to this question do not seem to claim that to preserve this office it is necessary that it should be a constitutional office, but they put the ground of its necessity upon the actual increase of the population and the probable future increase of population and wealth and property there, and they give us figures to show what will be the future population at the present ratio of increase in the county of Kings. Now, suppose it should occur by and by that it be found convenient and necessary to divide the county of Kings, to take the rural part and make one county, and retain for it the name of Kings, and make the city of Brooklyn a separate county by some other name. If the increase in population goes on in the way these gentlemen claim, that thing is not improbable. Then if your Constitution has fixed the office of register for Kings county, it is an office, outside of Brooklyn, for a rural county which will not need it, and no such office is provided for the city and county of Brooklyn, where it is needed. That is my objection to putting this office by name in the Constitution. Once there, it is fixed and cannot be changed; and it will be placed upon a municipality, which does not need it. Not there, it is left to the vicissitudes and changes of affairs among men, and the necessities of change which may arise at any time. And except the city and county of New York, which by its territorial formation and other circumstances is *sui generis*, so in regard to every county of the State. It may be, by and by, that the county of Westchester may be divided, but yet whatever part of it is called Westchester must retain the office of register: if it is named in the Constitution, although the necessity might not exist when the division takes place.

Mr. VEEDER—Would not this apply just the same to sheriffs and county clerks?

Mr. FOLGER—No; because sheriffs and county clerks are for all counties, and all counties must

have them; but it is only in exceptional cases that it is claimed by the gentleman that a register is needed. The exceptional case of the county of New York, the exceptional case of the county of Kings, the exceptional case of the county of Westchester, those three exceptional cases are named, and those only; but no county can be created which does not need a county clerk and sheriff.

Mr. LARREMORE—I hope the last amendment offered will not prevail, inasmuch as it proposes to strike out from the report the words "register of the city and county of New York." This office now is a constitutional office, known and recognized as such, and its liabilities are well defined. The office of register of Kings county, and of Westchester county, have been established by special statutes, and the liabilities of these offices are there provided for, there is no such special statute in regard to the register of the city and county of New York, and it will perhaps lead to endless litigation if that office is omitted from the proposed Constitution, inasmuch as it has been recognized as a constitutional office for the last twenty years. I hope the section may remain as reported by the committee.

The question was then put on the amendment of Mr. Seaver and was declared carried, on a division, by a vote of 48 to 32.

A DELEGATE—There was no quorum voting.

Mr. HUTCHINS—I move a reconsideration of the vote just taken.

The PRESIDENT—Is there objection to its being reconsidered at the present time.

A DELEGATE—I object.

The PRESIDENT—The motion will lie upon the table.

Mr. HUTCHINS—I withdraw my motion to reconsider.

The PRESIDENT—It is too late. It will lie upon the table.

Mr. HUTCHINS—I merely wish to say that there is no such office in the State as register of deeds.

Mr. GOULD—I move to amend the section.

The SECRETARY proceeded to read the amendment, as follows:

Strike out the words "district attorneys" in line two, and insert the following at the end of the section: "There shall be appointed in each county by the judges of the courts of general sessions of the peace, a district attorney, who shall hold his office during the pleasure of such court."

Mr. GOULD—I hope this amendment will commend itself to the favor of the Convention. It will be recollected that by the Constitution of 1821 the district attorneys for counties were thus appointed. It was found to work well in practice, and there was very little complaint so far as I know throughout the whole State, of the action of district attorneys; there has certainly been a great deal of complaint in regard to their conduct and action since the Constitution of 1846 was adopted. It is very evident that no persons can be better acquainted with what is required of a district attorney than the judges of the court in which he is accustomed to practice; they know his ability; and they know perfectly well whether

he discharges his duty faithfully and conscientiously. I think it must be evident to the members of the Convention that it is exceedingly undesirable to make this officer, who is intended for the protection of society and punishment of crime, to be nominated by a political convention. Every one knows that the thieves and those who are the subjects of the jurisdiction of the district attorney act with a great deal of energy and zeal, and with a very perfect combination of effort in all matters connected with their profession; and it is obviously their interest to have a man in the office of district attorney who shall be easy with them, and all experience shows that they are exceedingly active in influencing such nominations. Now, gentlemen must be aware that there are, in many of the counties, organized bands of thieves, who extend their ramifications into a number of counties; take for instance the well known gang known as the Loomis gang, having their center of operations in the county of Oneida; they are known to be energetic politicians; their ramifications are known to extend into Madison, and as far south as the county of Sullivan, and they are exceedingly active in those counties when the subject of district attorney is brought up for discussion. I hope the Convention will consider this matter favorably, for I believe it will be a blessing to the people of the State. I would like to amend the amendment if there is no objection. It reads "general sessions." I move to strike out the word "general."

The PRESIDENT—The amendment will be made, as no action has been taken on it.

Mr. FULLERTON—I would call the attention of the gentleman from Columbia [Mr. Gould], to the fact—the words "general sessions" are used. The court of general sessions only exists in the city of New York.

Mr. GOULD—The amendment has been made.

Mr. FULLERTON—Then the words "of the peace" should be stricken out. There is no such court as a "court of sessions of the peace," nor is there any such court as "general sessions of the peace."

Mr. GOULD—I move to strike that out also.

The PRESIDENT—This will also be stricken out.

Mr. FULLERTON—Now the difficulty is, in this amendment, with reference to the appointment of district attorney, in the city and county of New York.

A DELEGATE—We are satisfied to leave that to the electors. [Laughter.]

Mr. GOULD—Then I will further amend, if permitted to do so, by adding, after the word "sessions," the words, "and in the city and county of New York by the judge of the court of general sessions of the peace."

The PRESIDENT—That amendment will be made.

Mr. E. A. BROWN—The court of sessions is composed of the county judge and two justices of the peace. Of course the two justices of the peace, who are not generally any better qualified than the great mass of the voters in the county, have the entire power to appoint district attorneys under the amendment of the gentleman

from Columbia [Mr. Gould]. It is suggested by my friend here, that the two justices of the sessions are of different politics, and that perhaps the county judge would give a casting vote. But, sir, I ask the gentleman [Mr. Gould] if he insists that all the voters of any one county in this State are not as competent to designate a person for district attorney as the two justices of the peace that may happen for the time being to occupy a seat on the bench of the court of sessions? I do not know how true it is, as claimed by the gentleman, that district attorneys performed their duties better prior to 1846 than they have since that time. I remember something before that time and considerable since, and if we have heard complaints with regard to district attorneys since 1846 I have not heard any more pointed, any more specific, nor any more damaging complaints than I heard before that time in regard to the conduct of district attorneys and the manner in which they discharged their duties. But, sir, complaints are universal, if a man does his duty as district attorney; and if he fails to do his duty, he is also complained of; and I believe the people, at least, understand that a public officer who is obliged to show himself in the courts as the district attorney is, who is obliged to appear before the grand jury, and the public generally, is held to as much responsibility as any officer, and that the people are as likely to know who is competent and who is likely to perform his duties well, as the two justices and the county judge are. Sir, I would rather trust the people of the county than any county judge or any justice of sessions. It does not require a great deal of argument to satisfy the gentlemen of this Convention that the occupants of the bench are merely human beings, and if anybody is liable to bias and influence for personal or political objects, it is this appointing power consisting of three persons. I am entirely opposed to it, sir. I believe the deposit of this power of selecting district attorneys is better in the hands of the people than in that of any three persons.

Here the gavel fell, the gentleman's time having expired.

Mr. HAND—I offer the following amendment to the amendment:

Strike out the words "district attorneys" in line two, and insert at the end of the section the words "there shall be appointed for each county by the judges of the supreme court, assembled in general term, of the district in which such county is situated, a district attorney, who shall hold his office during the pleasure of the court which appoints him."

Mr. ALVORD—I am decidedly opposed to the amendment offered by the gentleman from Broome [Mr. Hand], as well as to the amendment of the gentleman from Columbia [Mr. Gould]. As we have constituted, the judicial districts of this State, at this time, outside of the city and county of New York, there is hardly a judicial district but what contains more counties than the number of supreme court judges who are elected within the district. In my district, for instance, we have six counties and four judges. It is true that the county which, in part, I represent here, has one

of the judges in that district. But it may happen, sir, in the course of time that my county may not have a judge; and it may happen at some time when that county has not a judge that the district attorney is to be appointed. Sir, I have more confidence in the discretion and wisdom of the people within the limits of my county to judge correctly in regard to the selection of district attorney for our people, than I have in judges living outside of my county. So far as regards the experience of the county of Onondaga, notwithstanding the fact that, previous to the Convention of 1846 and the Constitution proceeding therefrom, there had been appointed by a tribunal, which was entitled to consideration and respect, our district attorneys, yet still the district attorneys that have been elected by the people in that county, under the present Constitution, have been, to say the least, equal to the district attorneys who were appointed by the local court previous to that time. Previous to 1846, in this State, there were courts of common pleas, having original jurisdiction, with a presiding judge who was an eminently qualified lawyer ordinarily, and with four gentlemen scattered over the county, of ability, integrity and uprightness of character, associated with him, and they, expressing the sentiments and views of the entire county, got together, and through the power which was vested in them, appointed a district attorney. When the Constitution of 1846 abolished the original jurisdiction of that court and reduced its members to one. So far as it regards civil jurisdiction, and for the purposes of criminal jurisdiction, associated with him two justices of the peace elected by the people, in my humble opinion, they lowered the dignity and position of that court so much that it could not, by any possibility, be expected on the part of that Convention, that they would delegate to any such court the power of appointing district attorneys. And in view of the fact that there is hardly one of the judicial districts of the State but what contains more counties than there are judicial officers of the supreme court or judges of the supreme court within their limits, I trust the Convention will not impose upon that court this power, to the exclusion of the people of the county.

Here the gavel fell, the gentleman's time having expired.

Mr. GOULD—I wish to remark, in reply to what the gentleman from Lewis [Mr. E. A. Brown] has said that I do not yield at all to him in respect for the people of the State of New York, or of the people of the counties composing it; but everybody knows that the idea of the people making the selection is a mere nominal one, that the people of the county have very little to do in that selection. The fact is, conventions of each political party get together, and each nominates a candidate, and the choice of the people is practically confined to one or other of the candidates thus nominated. Now, it is entirely useless for me, in an assembly composed of politicians, and who know perfectly well from long experience how these conventions are managed, to show that, that the people do not have any weight in the matter of selecting

a candidate. There is a great deal of wire-pulling in these matters. Those who are very deeply interested in the promotion of a particular scheme, acting intelligently and in concert, are altogether more than a match for those who merely desire to have a good officer selected. We all of us know from experience how these conventions have been managed in times past, and we have no sort of reason to suppose they will be managed any better in the future. In reply to the gentleman from Onondaga [Mr. Alvord], I will say that I am not particular which of these amendments shall be adopted; but it is a strange argument to hear that the supreme court of a given district is incompetent to select a district attorney of a given county, because none of the judges may happen to live in the county. The judges are perfectly familiar with the bar of every county in their district, and they know the qualifications of the candidates quite as well as the residents of the county. It seems to me, therefore, there is nothing whatever in this argument. Gentlemen who occupy positions of judges of the supreme court are all of them gentlemen of personal integrity and private worth, who may be very properly relied upon to select district attorneys acceptable to the people, and who would discharge their duties in the best manner possible. I hope, therefore, one of the amendments may be adopted.

Mr. GERRY—Before there shall be any alteration of the present system, as claimed by the gentleman from Columbia [Mr. Gould], I submit that there ought to be a cause for the alteration shown by some definite facts. The idea that the people are to be deprived of a privilege which they have exercised for a long period of years without any grave or great abuse produced thereby, is a very novel one; and without attempting to argue the matter, I desire to call attention to one fact in connection with the election of district attorneys. If, as the gentleman says, it results in the choice by the people of one of two candidates, nominated by political parties, is it not an absurdity to suppose that either party would place a man notoriously incompetent or corrupt at the head of its ticket?

Mr. FOLGER—I move the previous question.

The question was put on the motion to order the previous question, and it was declared carried.

The question was then put on the amendment of Mr. Hand, and it was declared lost.

The question then recurred and was put on the amendment offered by Mr. Gould.

Mr. GOULD—I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The SECRETARY proceeded to call the roll on the amendment of Mr. Gould, and it was declared lost by the following vote:

Ayes—Messrs. Comstock, Conger, Gould, Greeley, Hale, Hand, Houston, Hutchins, A. D. Russell—9.

Noes—Messrs. A. F. Allen, Alvord, Andrews, Archer, Baker, Ballard, Barker, Barnard, Barto, Beadle, Beckwith, Bell, Bergen, Bickford, E. Brooks, E. P. Brooks, J. Brooks, E. A. Brown, Burrill, Carpenter, Champlain, Chesebro, Cooke, Corning, Curtis, Daly, Duganne, C. C. Dwight, T. W. Dwight, Ely, Evarts, Field, Folger Fowler,

Frank, Fullerton, Garvin, Gerry, Goodrich, Grant, Graves, Hadley, Hardenburgh, Harris, Hatch, Hitchcock, Hitchman, Kernan, Kinney, Krum, Landon, Lapham, Larremore, A. Lawrence, A. R. Lawrence, Lowrey, Ludington, Mattice, McDonald, Merrill, Merwin, Monell, More, Morris, Nelson, Opdyke, Paige, A. J. Parker, C. E. Parker, President, Prosser, Rathbun Reynolds, Robertson, Root, Rumsey, L. W. Russell, Schell, Schoonmaker, Seaver, Seymour, Silvester, Sheldon, Sherman, Smith, Spencer, Tappen, S. Townsend, Van Cott, Veeder, Wakeman, Wales, Wickham, Young.—94.

Mr. HALE—I move to amend this section by striking out in the second line the words "and district attorneys." My object in proposing this amendment is to raise the question simply and distinctly, whether the office of district attorney shall or shall not continue to be elective. It is evident that gentlemen upon this floor who are opposed to the election of district attorney are not agreed as to what method of appointing shall be adopted.

Mr. ALVORD—I am compelled, Mr. President, to rise to a point of order. If I recollect aright, the previous question was only to apply to sections, not to the whole article. The previous question having been ordered, I think—

The PRESIDENT—The gentleman is mistaken. The previous question not only applies to sections, but to parts of sections, and all other questions that may be raised.

Mr. HALE—If we determine that the district attorney shall not be elected by the people of the county, the matter of appointment may very well be left open until we come to the consideration of some other report. I have only one word to say upon this general question as to the election or appointment of district attorneys, in addition to what I have already said in the Committee of the Whole, and that is to answer an objection which was made upon the alleged ground that the district attorney was a representative officer. The committee who made this report based their recommendation that he should be appointed in part upon the ground that he was not a representative officer. Gentlemen upon this floor have stated that this was not so; that a district attorney was a representative officer. In one sense I admit that he is, but whom does he represent? Does the district attorney represent the people of the county of Albany, or the people of the city and county of New York? By no means. He represents the people of the State of New York; and if the argument that he is a representative officer is worth anything, it shows only that he should be elected by the people of the whole State, and not by the people of a particular locality where a particular sentiment may prevail, which is in opposition to the will of the people of the State. Therefore I say that, so far as there is anything in that argument, it is an argument against the election of this State officer, the person who represents the people of the State, by the people of a particular section or locality. Upon this amendment I ask that the ayes and noes may be taken.

Mr. BARKER—I move the previous question on the pending amendment.

The question was then put on ordering the pre-

vious question, and it was declared carried on a division, by a vote of 40 to 25.

A DELEGATE—There is no quorum voting.

Mr. HALE—I ask for the ayes and noes on the motion for the previous question.

Not a sufficient number seconding the call, the ayes and noes were not ordered.

The question was then put on ordering the previous question, and it was declared carried, on a division, by a vote of 63 to 27.

The question was then put on the proposition of Mr. Hale, and it was declared lost.

Mr. HALE—I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The SECRETARY proceeded to call the roll on the amendment of Mr. Hale, and it was declared lost by the following vote:

Ayes—Messrs. Bickford, E. P. Brooks, Chesebro, Comstock, Conger, Curtis, Duganne, T. W. Dwight, Ely, Evarts, Gould, Greeley, Hale, Hand, Harris, Houston, Hutchins, Krum, Lapham, A. Lawrence, Ludington, Opdyke, C. E. Parker, Prosser, Rathbun, L. W. Russell, Seaver, Silvester, Smith, Van Cott—30.

Noes—Messrs. A. F. Allen, Alvord, Andrews, Archer, Baker, Ballard, Barker, Barnard, Beadle, Beals, Beckwith, Bell, Bergen, E. Brooks, J. Brooks, E. A. Brown, Burrill, Carpenter, Champlain, Cochran, Cook, Corning, C. C. Dwight, Field, Folger, Fowler, Frank, Fullerton, Garvin, Gerry, Goodrich, Grant, Graves, Hadley, Hardenburgh, Hatch, Hitchcock, Hitchman, Kernan, Kinney, Larremore, A. R. Lawrence, Lee, Lowrey, Mattice, McDonald, Merrill, Merwin, Monell, More, Morris, Nelson, Paige, A. J. Parker, President, Reynolds, Robertson, Rogers, Root, Rumsey, A. D. Russell, Schell, Schoonmaker, Schumaker, Seymour, Sheldon, Sherman, Spencer, Tappen, S. Townsend, Veeder, Wakeman, Wales, Wickham, Young—75.

Mr. LARREMORE—I desire to offer an amendment.

The SECRETARY read the amendment as follows:

After the word "including," in first line, insert the words "the register of the city and county of New York and the register of deeds in all counties where such registers are now or may be authorized by law."

Mr. LARREMORE—I offer this merely to correct the phraseology of the section as amended. I have submitted it to the gentleman who proposed the original amendment on the subject [Mr. Seaver], and he agrees to it. I think it important, as it will remove any doubt that may arise under the section.

The question was put on the amendment of Mr. Larremore, and it was declared carried.

Mr. BALLARD—Mr. President, I move to strike from the fifth and sixth lines of the first section the words "and be ineligible for the next three years after the termination of their offices." I desire to say that, in my judgment, there is no longer any reason why a sheriff should not be eligible for re-election, provided the people of his county see fit to elect him. The time has been, when imprisonment for debt prevailed, that reasons existed why a sheriff should not be re-elected.

There is no reason, in my judgment, now why a sheriff should be ineligible for re-election more than a district attorney or county judge should be ineligible. I hope the amendment will be adopted by this Convention, and on that question I ask the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put on the amendment of Mr. Ballard, and it was declared lost by the following vote:

Ayes—Messrs. Alvord, Archer, Baker, Ballard, Beals, E. Brooks, Carpenter, Cochran, Farnum, Fullerton, Goodrich, Grant, Hatch, Hitchcock, London, Merrill, Morris, S. Townsend—21.

Noes—Messrs. A. F. Allen, Andrews, Barker, Barnard, Barto, Beadle, Beckwith, Bell, Bergen, Bickford, E. P. Brooks, J. Brooks, E. A. Brown, Burrill, Champlain, Chesebro, Church, Colahan, Comstock, Conger, Cooke, Corning, Curtis, Daly, Duganne, C. C. Dwight, T. W. Dwight, Ely, Evarts, Field, Folger, Fowler, Gerry, Gould, Graves, Greeley, Hadley, Hale, Hand, Hardenburgh, Harris, Hitchman, Houston, Hutchins, Kernan, Kinney, Krum, Lapham, Larremore, A. Lawrence, A. R. Lawrence, Lee, Lowrey, Ludington, Mattice, McDonald, Merwin, Monell, More, Nelson, Opdyke, Paige, A. J. Parker, President, Prosser, Rathbun, Reynolds, Robertson, Rogers, Root, Rumsey, A. D. Russell, L. W. Russell, Schell, Schoonmaker, Schumaker, Seaver, Seymour, Silvester, Sheldon, Sherman, Smith, Spencer, Tappan, Van Cott, Veeder, Wakeman, Wales, Wickham, Young—90.

Mr. BICKFORD—I move to strike out from the second line the word "coroners." The object of the amendment is that the office of coroner shall no longer be a constitutional office, but an office under the control of the Legislature. In the county in which I reside and almost all the counties of the State, the office of coroner has become a useless office. It is not needed at all. It is simply an absurdity to elect in each of the counties of Jefferson and Lewis four coroners. An act was passed last winter or the winter before, conferring the powers of coroners upon justices of the peace. The Committee on Towns and Counties in considering the question of abolishing the office, conceded that in almost every county of the State it ought to be abolished, but in such counties as Kings and Albany, etc., it was deemed important to continue it. Now if this amendment is adopted, it will be continued where it is necessary, and where it has become wholly useless it may be discontinued.

Mr. HARRIS—I shall vote for this amendment. The office of coroner, I know, is of no great account. It is a very venerable office in its name but it has become useless. Not one in ten of the coroners of the State have anything to do at all, and so far as my observation extends, it is only used to make changes in political conventions.

Mr. BECKWITH—In what manner will you arrest a sheriff, if the office of coroner is abolished?

Mr. HARRIS—If the Legislature cannot find a way we will amend the Constitution.

Mr. SEYMOUR—I do not know what may be the sentiments of this Convention, but it strikes

me as a very extraordinary proposition that this office shall be dropped entirely. We need a coroner. A suggestion has just been made by the question put to the gentleman from Albany [Mr. Harris], as to how we are to proceed against a sheriff for malfeasance, for trespass, for anything in which he is liable. The common law has prescribed, and it has been the usage of this State, and I do not know how extensively elsewhere, that the process in all such cases shall be issued to the coroner. He is an officer for the purpose of executing such process upon the sheriff. And then, again, in all our large counties, and especially in all counties where there is a large city, the office of coroner is a very important one in reference to criminal matters. We see the fact in the daily publications throughout the year in the city of New York, and it is so in all large counties. His duties are of a very high and responsible character. He has to ascertain the causes of death, and whether crime has been committed in such cases. I cannot believe that this Convention is prepared, on a mere suggestion of this kind, to abrogate this office because, in some portions of the State, it is unnecessary. It does no harm where there is but very little to do, for where there is but very little to do his charges against the county must be very small.

Mr. RATHBUN—Will the previous question carry us to the adoption of the section if it is moved upon the whole matter?

The PRESIDENT—It will.

Mr. RATHBUN—Then I move the previous question.

The question was put upon ordering the previous question, and it was declared carried.

The question then recurred and was put upon the first section as amended, and it was declared carried.

The SECRETARY proceeded to read the second section, as follows:

SEC. 2. All county officers whose election or appointment is not provided for by this Constitution, shall be elected by the electors of the respective counties, or appointed by the board of supervisors, or other county authorities, as the Legislature shall direct. All town officers whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such town, or of some division thereof, or appointed by such authorities thereof as the Legislature shall designate for that purpose.

Mr. VEEDER—I move the following amendment. It is nothing more than adding the last paragraph of the section of the present Constitution.

The SECRETARY proceeded to read the amendment as follows:

"All other officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law shall be elected by the people, or appointed as the Legislature may direct."

Mr. VEEDER—It seems to me that this provision should be continued in the Constitution we propose to submit to the people. In my opinion this is a proper place to incorporate it, and I hope it will be adopted.

Mr. EVARTS—Mr. President, I rise not to

ture to create commissions. They are unlimited consume any of the time of the Convention, but to express my hearty concurrence in the motion of the gentleman from Kings [Mr. Veeder]. I observed the omission of this clause of the present Constitution in the report of the committee, and certainly it is desirable that a provision for future offices should be included in the Constitution we frame to save questions that may be raised.

Mr. PAIGE—If this last clause of the second section is adopted, the result will be that officers that ought to be elected by the people will be directed by the Legislature to be appointed, and for that reason I oppose the proposition of the gentleman from Kings [Mr. Veeder].

Mr. BURRILL—I hope the amendment of the gentleman from Kings [Mr. Veeder] will not prevail. I supposed that that clause had been omitted purposely. It was the existence of this clause in the second section which gave rise to so much litigation in regard to the power of the Legislature; and while it was conceded that the election or appointment of officers which might strictly be called county officers, was, by the first clause, of that section, directly given to the people or the local authorities of the county; and while in the second clause of that section all officers who may strictly be termed county, town and village officers, were to be elected by the people of the cities, towns and villages, or to be appointed by the authorities of that locality; it was under the last clause of this section that it was claimed that the Legislature had a right to make a different division of the State than counties, towns, cities and villages; that there was nothing in the Constitution which prohibited the dividing of the State into new divisions or making new districts, and that when these new districts were created, the officers placed over these districts were neither county, town, city or village officers, and therefore all those officers could be elected or appointed as the Legislature might direct. It was claimed that by the mere addition of some other territory to a county, the Legislature might direct that these new district officers should be elected or appointed as the Legislature might direct, and they claimed under that this class of officers should be appointed by the Legislature or by such authorities as the Legislature might confer the power upon. It is this clause which has created all the litigation which arose in regard to creating the metropolitan district, consisting of New York, Kings, and of the adjacent counties of Westchester, Richmond, and I think one other. It was under that clause that the Legislature claimed the power to create metropolitan districts. It was under that clause that they have created the capital police districts, uniting Albany and Rensselaer counties; and the frontier police district, by uniting portions of Niagara county to Buffalo and the adjacent towns. I hope therefore, the amendment of the gentleman from Kings [Mr. Veeder], will not be adopted. If it shall be, it will be the inserting into this Constitution a clause which will cause a great deal of difficulty, and in regard to which great difficulty has already arisen.

Mr. FOLGER—I do not agree with the gentleman from New York that this clause has caused

litigation. The litigation arose from a passionate dissatisfaction with the legislation which that clause permitted. I will agree with him, however, if he says that it was by reason of that clause, that this litigation came to a profitable result. For it was upon this clause that the court of appeals placed the right of the Legislature to establish the different commissions as they now exist in the city of New York, and without that clause, it may be, that those commissions would fall, having nothing to support them. It is for that reason that I approved the amendment of the gentleman from Kings [Mr. Veeder] and on that amendment I move the previous question.

The question was put on ordering the previous question and it was declared carried.

Mr. BURRILL—I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The SECRETARY then proceeded to call the roll on the amendment offered by Mr. Veeder.

The name of Mr. Veeder was called.

Mr. VEEDER—I desire to be excused from voting. [Laughter.] I make this application because I have not been allowed an opportunity of expressing my object in submitting this amendment, and that I may now say a word as to my intentions. I offered this amendment, believing then as I do now, that it is a material and proper one. That it is absolutely necessary to provide for the election or appointment of a certain class of new officers that it may become necessary from time to time to create. There are many officers now appointed by direction of the Legislature, other than county, city and town officers, the manner of whose selection cannot be questioned. I do not agree with several gentlemen in reference to the legitimate effect of this provision. I do not wish any one to understand me as at all favoring the system of governing our cities by commissions, or the acts of past Legislatures, which have forced upon our cities large, useless and expensive commissions. My position in opposition to commissions ought to be fully understood. I have heretofore upon this floor, while a member of the Legislature, expressed my views upon that subject, and I will not repeat them now. Though the Legislature, in violation of the spirit and object of the provision now under consideration, have created commissions in districts and district officers, yet I think there is a necessity for this provision. Because the Legislature has violated the fair construction of this provision, is it our duty to abandon it? I never, with all due respect to the decisions of the court of appeals, believed any authority was by this provision given or intended to be given to the Legislature to create commissions, taking from our cities the control of their local and legitimate affairs. I intend, however, in order to obviate this misconception, in order to prohibit absolutely the Legislature from creating commissions to affect municipalities and their government, to offer a provision, when we come to consider the report of the Committee on Cities, which will accomplish that object. Without this amendment, as the section now stands, there is no possible restriction against creating commissions. This amendment will confer no additional power upon the Legisla-

without it, and may provide for the appointment of all city and village officers, for these classes of officers are left out of the section as it now stands. However, it would perhaps avoid misunderstanding if this amendment now being considered were withdrawn for the present, and were it not that the previous question has been sprung upon us, I should now withdraw the proposition. For these reasons I desire to be excused from voting.

The question was then put upon excusing Mr. Veeder, and it was declared carried, upon a division, by a vote of 44 to 40.

The SECRETARY completed the call of the roll, and the amendment of Mr. Veeder was declared carried, by the following vote:

Ayes—Messrs. A. F. Allen, Alvord, Andrews, Archer, Ballard, Barker, Beadle, Beals, Beckwith, Bell, Bickford, E. P. Brooks, E. A. Brown, Carpenter, Curtis, Duganne, C. C. Dwight, T. W. Dwight, Ely, Evarts, Field, Folger, Fowler, Frank, Fullerton, Goodrich, Gould, Grant, Graves, Greeley, Hadley, Hale, Hand, Harris, Hitchcock, Houston, Hutchins, Kinney, Krum, Landon, Lapham, A. Lawrence, Lee, Ludington, McDonald, Merrill, Merwin, Opdyke, C. E. Parker, President, Prosser, Rathbun, Reynolds, Root, Rumsey, L. W. Russell, Schoonmaker, Seaver, Silvester, Sheldon, Sherman, Spencer, Van Cott, Wakeman—62.

Noes—Messrs. Baker, Barnard, Barto, Bergen, E. Brooks, J. Brooks, Burrill, Champlain, Chesebro, Church, Cochran, Comstock, Conger, Cooke, Corning, Daly, Garvin, Gerry, Hardenburgh, Harris, Hatch, Hitchman, Kernan, Larremore, A. R. Lawrence, Lowrey, Mattice, Monell, More, Morris, Nelson, Paige, A. J. Parker, Robertson, Rogers, A. D. Russell, Schell, Schoonmaker, Schumaker, Seymour, Tappen, S. Townsend, Wales, Wickham, Young—45.

Mr. KERNAN—I move to reconsider the vote just taken.

Objection being made, the motion to reconsider was laid over, under the rule.

Mr. HITCHMAN—I move to amend the section as it now stands so as to strike out all after the word "people."

The question was put on the amendment of Mr. Hitchman and it was declared lost.

Mr. HITCHMAN—I call for the ayes and noes.

A sufficient number seconding the call the ayes and noes were ordered.

Mr. RATHBUN—Is it in order to move the previous question on the second section?

The PRESIDENT—It is.

Mr. RATHBUN—I move the previous question on the section.

The question was put on ordering the previous question, and it was declared carried.

The SECRETARY then proceeded to call the roll on the amendment of Mr. Hitchman, and it was declared lost, by the following vote:

Ayes—Messrs. Baker, Barnard, Barto, Bergen, E. Brooks, J. Brooks, Burrill, Champlain, Chesebro, Church, Cochran, Comstock, Conger, Corning, Daly, Garvin, Gerry, Hardenburgh, Hatch, Hitchman, Kernan, Larremore, A. R. Lawrence, Lowrey, Mattice, Monell, More, Morris, Nelson, Paige, A. J. Parker, Robertson, Rogers, A. D. Russell, Schell, Schumaker, Seymour, Tappen, S. Townsend, Veeder, Wickham, Young—42.

Noes—Messrs. A. F. Allen, Alvord, Andrews, Archer, Ballard, Barker, Beadle, Beals, Beckwith, Bell, Bickford, E. P. Brooks, E. A. Brown, Carpenter, Cooke, Curtis, Duganne, C. C. Dwight, T. W. Dwight, Ely, Evarts, Field, Folger, Fowler, Frank, Fullerton, Goodrich, Gould, Grant, Graves, Greeley, Hadley, Hale, Hand, Harris, Hitchcock, Houston, Hutchins, Kinney, Krum, Landon, Lapham, A. Lawrence, Lee, Ludington, McDonald, Merrill, Merwin, Opdyke, C. E. Parker, President, Prosser, Rathbun, Reynolds, Root, Rumsey, L. W. Russell, Schoonmaker, Seaver, Silvester, Sheldon, Sherman, Spencer, Van Cott, Wakeman, Wales—66.

The question was then put on the adoption of the second section as amended, and it was declared adopted.

Mr. KRUM—I move to reconsider the vote on the first section.

Objection being made, the motion was laid over under the rule.

Mr. GERRY—I move a reconsideration of the vote, by which the second section was adopted.

Objection being made, the motion was laid over under the rule.

Mr. KRUM—My motion was to reconsider the vote by which the previous question was ordered on the first section.

The PRESIDENT—The motion cannot be entertained at the present time, objection being made.

The SECRETARY proceeded to read the third section of the article, as reported by the Committee of the Whole, as follows:

SEC. 3. The Legislature shall, at the first session thereof after the adoption of this Constitution, and from time to time thereafter, by general laws, applicable to all the counties of the State in which boards of supervisors shall exist, confer upon the boards of supervisors of the several counties of the State such additional powers of local legislation and administration as may be deemed expedient; and during the continuance of laws conferring powers upon said boards, the powers therein conferred shall be exclusively exercised by said boards of supervisors.

Mr. SHERMAN—I offer an amendment as a substitute to the third section.

The SECRETARY proceeded to read the amendment as follows:

SEC. 3. There shall be in each of the counties of this State (except New York), a board of supervisors, elected in such manner and for such period and composed of such numbers as is or may be provided by law, and they shall, in addition to the powers which they now possess or which may be hereafter given to them by the Legislature, and subject to legislative modification, have exclusive jurisdiction over the following specified subjects, and where the jurisdiction shall be exercised by legislative authority, it shall be exclusive, until the authority shall be withdrawn; but such jurisdiction shall not be exercised in any case without the assent of a majority of all the members elected to such board, to be determined by yeas and nays, which shall be entered on the journal.

1. The location, erection, purchase and reparation of bridges (except over navigable streams),

in cases where the general laws of the State shall be insufficient to accomplish the object; but where such bridges shall be between adjoining counties, the concurrent action of all the boards of supervisors of such counties shall be necessary.

2. The location, purchase, erection and care of buildings, and the purchase of real estate for town and county purposes.

3. The erections of portions of public highways into separate road districts for the purpose of improvement, beyond what may be authorized by general State laws.

4. The use and working, as public highways, of turnpike, plank and macadamized roads, after they shall have been lawfully abandoned.

5. The working and improvement of public highways, laid out in pursuance of the general laws of the State, in cases where such laws may be insufficient to accomplish the object.

6. The legalization of the informal acts of town meetings in reference to the raising of moneys authorized to be raised by law, and the legalization of the irregular acts of town officers, on the recommendation of the county court.

7. The fixing of the salaries of county officers, and the number, grades and pay of clerks and subordinate employees in county offices whose compensation may be a county charge.

8. The borrowing of money for town and county purposes, in anticipation of taxation authorized by law.

Mr. SHERMAN—The amendment I offer varies from the printed form on the files in two respects, which I will state. I have inserted the provision contained in the amendment of the gentleman from Orleans [Mr. Church], which makes the jurisdiction conferred on boards of supervisors by the Legislature exclusive while it lasts. The other variation is in the striking out of the provision for the draining of swamp lands, which, I think, may be accomplished by a general law. It is unnecessary that I should say anything of the evil which results from flooding the Legislature with bills of a strictly local character. All admit and all wish to correct it. Can it be done? This is practically the question we have been considering for the last three days. The Committee on Town and County Officers, after a patient and searching examination of the case, presented a scheme that promised results in this direction; but the Convention, doubting its practicability, has seen fit to set it aside, and has thus far failed to supply a proper substitute. Feeling that the struggle ought not to be abandoned without one more effort, I have offered the proposition now before the Convention. It is simple, and will be easily understood by all who have had practical experience in the details of town and county affairs. It seeks to combine the merits of the several plans proposed by the gentleman from Onondaga [Mr. Andrews], the gentleman from Orleans [Mr. Church], and the report of the committee, though it does not accomplish all the objects sought by the latter. It gives to boards of supervisors certain distinct, sharply defined, exclusive powers, confirms those they already possess by legislative enactment, and authorizes their further extension—the powers derived from the Legislature to be subject, always, to legislative revision. The im-

portant question for the Convention to determine is, whether the powers granted absolutely are safe to be intrusted to the boards of supervisors. This question does not arise in regard to the other powers, for they are in the control of the Legislature, which may modify them at will, or wholly withdraw them. A brief reference to the enumeration of the powers exclusively given, will enable gentlemen to judge of their propriety. The first relates to bridges. Boards of supervisors already possess large powers in reference to this subject, but not all that is desirable. They may borrow money to a limited amount to repair and construct bridges; but when bridges costing beyond this limit are swept away by fire or flood, the Legislature is the only remedy. The action of this body, in nineteen-twentieths of such cases, is based upon the recommendation of boards of supervisors. Why may not they be safely trusted with the full control of the subject? The second specification relates to county buildings. I do not know but the supervisors have already all the authority on this subject that this proposes to give them. In this case, the only effect will be to make the jurisdiction exclusive. I think no one will question the safety of this. The third specification relates to the working of abandoned chartered roads, for which no provision, that I know of now, exists in general laws. It does not propose to allow a general change in the highway system of the State, but simply to enable the inhabitants of a neighborhood or town, or number of towns, to put in proper condition for use a road given up by the corporators. To do this may require a greater amount of labor than the general laws permit; yet, as the law now stands, the only recourse is to the Legislature. What information, or what capacity, can a Legislature possibly have over a local board, to judge of the propriety of such a measure? The fourth specification relates to separate road districts; for example, where the people of a village, forming a particular road district of a town, wish to gravel the street, or make sidewalks, and for this purpose need to lay out an additional amount of highway labor, or purchase, perhaps, a gravel bed. Is the overshadowing wisdom of the Legislature necessary to pronounce judgment on such a measure before it shall be permitted? The fifth specification is of a similar character to the two preceding ones. The inhabitants of a town or neighborhood may wish to put more work on a particular road than the general law now permits. Why should they be required to come to the Legislature for a thing that could be so much better determined by the local authority? The sixth specification relates to the confirmation of informal acts of towns and town officers in matters controlled by statute. For illustration, a town votes at a special town meeting to raise certain money to rebuild its town-hall. There has been an informality in the notice of the meeting, and the bonds of the town are, in consequence, illegal. Is not the board of supervisors—the power which must eventually direct the raising of the money—the proper authority to provide the remedy by legalizing the informality? A town officer, through acci-

dent or inadvertence, omits to take the constitutional oath of office, and his acts are, therefore illegal. His present remedy is to come to the Legislature, which passes blindly upon the case. How much better to leave such a subject to a local board, which can examine it in all its bearings; especially when it must have, as is provided, a further safeguard in the judgment of a county court, without which relief is unattainable. The seventh specification relates to fixing the salaries of county officers, and the grades and pay of subordinates, in cases where the pay is a county charge. Surely, if this be not a safe and proper subject to be intrusted to the local boards, what can be? The eighth specification simply authorizes the raising of money by loan in anticipation of duly authorized taxation. It does not give any authority to borrow or pay money for any but the usual and legally authorized objects of town and county expenditure. There are other subjects that might be properly included in the schedule; but I have selected only such as it seemed to me there could be no reasonable objection to. This is all of the authority conferred. Surely there is nothing here that can excite apprehension either of conflict of jurisdiction between the Legislature and the county boards, or of improper action on the part of the latter. And yet, simple as is this schedule of power proposed to be transferred, the effect will be to lessen the chapters of statute laws full one-fifth each year. There is not one of the class of objects specified that is not made each year the subject of legislative enactment. Any one who will look over a volume of the later session laws will see this. The Legislature may, by judicious exercise of its authority, transfer a much greater amount of authority; and when these things shall be done, and the range of general laws be properly extended, the means of log-rolling will be broken up, and thus the most fruitful of all sources of mischief will be banished from our legislative halls.

Mr. CONGER—I move the previous question.

Mr. FOLGER—Will the gentleman withdraw his amendment for a moment?

Mr. CONGER—Yes, sir.

Mr. FOLGER—Will the gentleman from Oneida [Mr. Sherman] accept as an amendment the insertion of the words "or existing special" after the word "general" in the thirteenth line?

Mr. SHERMAN—I accept it.

Mr. FOLGER—I move the previous question. The question was put on ordering the previous question, and it was declared carried.

The PRESIDENT proceeded to put the question on the substitute offered by Mr. Sherman.

Mr. E. BROOKS—I call for the ayes and noes.

A sufficient number having seconded the call, the ayes and noes were ordered.

The SECRETARY proceeded to call the roll.

Mr. BALLARD—I ask to be excused from voting on the following ground. I wish to be satisfied that the amendment proposed by the gentleman from Ontario [Mr. Folger] will except from the operation of this first subdivision incorporated villages. Many of them have streams running through them, and by virtue of their incorporation they have charge of the erection, repair-

ing and continuation of the bridges at the expense of an incorporation. I am in favor of this, so far as the section is concerned, provided it does not touch the authority of an incorporated village.

The question was then put on excusing Mr. Ballard from voting, and it was declared lost.

Mr. BALLARD—I vote "No."

The call of the roll was completed, and the substitute offered by Mr. Sherman was declared carried, by the following vote:

Ayes—Messrs. A. F. Allen, Archer, Baker, Barnard, Barto, Beadle, Beals, Bell, Bickford, E. Brooks, E. P. Brooks, W. C. Brown, Burrill, Carpenter, Champlain, Cochran, Corning, Curtis, Daly, Duganne, C. C. Dwight, Ely, Field, Fowler, Frank, Fullerton, Garvin, Gerry, Goodrich, Gould, Graves, Greeley, Hand, Hardenburgh, Harris, Hatch, Hitchman, Kernan, Kinney, Lapham, Larremore, A. Lawrence, A. R. Lawrence, Lee, Matrice, McDonald, Merrill, Monell, Morris, Opdyke, C. E. Parker, President, Reynolds, Robertson, Rogers, Root, A. D. Russell, L. W. Russell, Schell, Schumaker, Silvester, Sheldon, Sherman, Smith, Tappen, S. Townsend, Veeder, Wakeman, Young—69.

Noes—Messrs. Alvord, Andrews, Ballard, Barker, Beckwith, Bergen, E. A. Brown, Chesebro, Church, Comstock, Conger, Cooke, T. W. Dwight, Evarts, Folger, Grant, Hadley, Hale, Hitchcock, Houston, Krum, Landon, Lowrey, Ludington, Merwin, More, Nelson, Paige, A. J. Parker, Prosser, Rathbun, Rumsey, Schoonmaker, Spencer, Van Cott, Wales, Wickham—38.

The PRESIDENT—The article as adopted will be referred to the Select Committee on Revision.

Mr. BARKER—I move to reconsider the vote last taken.

Objection being made, the motion was laid over, under the rule.

Mr. RUMSEY—I move that we now adjourn.

The question was then put on the motion of Mr. Rumsey, and it was declared carried.

So the Convention adjourned.

FRIDAY, August 16, 1867.

The Convention met at ten o'clock A. M.

Prayer was offered by Rev. DAVID DYER.

The Journal of yesterday was read by the SECRETARY, and approved.

Mr. CARPENTER presented the petition of 5,000 citizens of the State, praying that, with the Constitution about to be submitted to the people, there should also be submitted a separate clause prohibiting the sale of intoxicating liquors as a beverage.

Which was referred to the Committee on Adulterated and Intoxicating Liquors.

Mr. TUCKER, from the Standing Committee on the Secretary of State, etc., presented the following report:

To the Honorable the Convention to revise and amend the Constitution of the State of New York:

The committee (No. 6) appointed to consider, and to which were referred the offices of "the Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor, their election or appointment, tenure of office,

compensation, powers and duties," having duly considered the subjects referred to them, respectfully

REPORT:

The first, second, sixth and seventh sections of Article five of the present Constitution require, in the judgment of your committee, but little alteration or amendment. They believe that the people of this State are satisfied with the elective system, inasmuch as no suggestion, by petition or otherwise, for the substitution of a system of appointment, has been laid before them. They have, therefore, not presumed to recommend any change in the manner of selecting State officers.

Your committee have, however, thought it best that the heads of the State departments should be chosen at the same time and for the same term as the Governor. They believe that a common tenure of office would add force, harmony and concurrence of action to the State administration. In order to elect the State officers in the year 1868, at the same time with the Governor, it has of course been found necessary to abbreviate to one year the term of those who may be elected in November, 1867.

Your committee has retained the provision that the State Engineer and Surveyor shall be a practical engineer; and have added one that the Attorney-General shall have been a counselor-at-law for ten years.

The present provision for the temporary suspension by the Governor of a State Treasurer who shall violate his official duty, has also appeared to your committee to be satisfactory, and likely to prove efficient should such an unhappy exigency arise. They have, however, proposed to add to this section a provision for the removal of the Treasurer from office by the Legislature, which finds no place in the present Constitution.

The subject of compensation has engaged the attention of your committee, and they report some additional provisions intended to confine the State officers to the receipt of fixed salaries for their official services; and also to require the payment of fees and costs received into the State treasury.

Your committee, therefore, respectfully submit the following proposed sections:

ARTICLE —.

SEC. 1. The Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor, shall be chosen at the same general election at which a Governor shall be chosen, and shall hold their offices for the same term as the Governor. But no person shall be elected to the office of Attorney-General who shall not have been a counselor-at-law of this State for ten years; and no person shall be elected to the office of State Engineer and Surveyor who shall not then be a practical engineer. The Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor, elected at the general election held on the Tuesday succeeding the first Monday in November, one thousand eight hundred and sixty-seven, shall hold their respective offices until and including the thirty-first day of December, one thousand eight hundred and sixty-eight, and no longer.

§ 2. The Treasurer may be suspended from office by the Governor during the recess of the Legislature, and until thirty days after the commencement of the next session of the Legislature, whenever it shall appear to him that such Treasurer has in any particular violated his duty. The Governor shall appoint a competent person to discharge the duties of the office, during such suspension of the Treasurer. The Legislature shall inquire into such suspension of the Treasurer, within thirty days after the commencement of the next session. And the Treasurer may be removed from office, for violation of duty, by a vote of a majority of all the members elected to each branch of the Legislature, after he shall have received a copy of the charges against him, and have had an opportunity of being heard in his defense.

§ 3. Each of the officers in this article named shall, at stated times during his continuance in office, receive for his services a salary which shall be established by law, and which shall not be increased or diminished during the term for which he shall have been elected; nor shall he receive to his use any fees, costs or perquisites of office, or other compensation. And all fees and other moneys received by any such officer (except his salary), and all costs or allowances of legal proceedings recovered by the Attorney-General shall be accounted for and paid into the State treasury.

§ 4. The powers and duties of the several officers in this article mentioned shall be such as now are or hereafter may be prescribed by law.

GIDEON J. TUCKER,
H. BAKER,
LORENZO D. ELY,
JEROME FULLER,
ABRM. R. LAWRENCE, Jr.

The undersigned subscribe to the report of the committee, with the exception of electing the Attorney-General and Secretary of State.

A. J. H. DUGANNE,
L. S. KETCHAM.

Mr. BALLARD—I offer an additional report of the Committee on Corporations, Banking, Insurance, etc. The previous report was from the joint Committee on Corporations.

The SECRETARY proceeded to read the report as follows:

The Committee on Corporations, other than Municipal, Banking and Insurance, respectfully report that they have had under consideration the resolution in regard to the expediency of providing in the Constitution "that all corporations composed of shareholders shall so conduct their elections for directors as to enable such number of shares to choose a director, as such number bears to the whole number of shares represented at the election, in the same ratio as unity bears to the number of directors to be chosen.

They have also had under consideration the resolution in regard to the expediency of inserting a clause in the Constitution, requiring the Legislature to pass a general act regulating the incorporation of gas companies.

They have also had under consideration the resolution relating to the propriety of a constitutional provision, requiring the railroads of this State to adopt a *pro rata* tariff for carrying

freights thereon, subject to regulation by the Legislature or by the Canal Board.

They have also had under consideration the resolution relating to the expediency of a constitutional provision, requiring all corporations in this State to be governed by directors, chosen once in each year by the stockholders thereof; and that no stockholder shall vote at any election, who has not been such for ninety days continuously, next preceding the election.

They have also had under consideration the resolution in regard to requiring of railroad corporations and steamboat proprietors or companies, a more strict accountability, for losses of life or limb, through neglect or ignorance.

And the committee have concluded, that the subject-matter embraced in the several resolutions, should not be acted upon by this Convention, for the reason that it appropriately belongs to legislative action.

The committee therefore ask to be discharged from the further consideration of the several resolutions referred to.

Dated August, 16, 1867.

HORATIO BALLARD,
Chairman.

LESLIE W. RUSSELL,
SOL. TOWNSEND,
D. P. BARNARD,
NORMAN STRATTON,
HOBART KRUM,
DOLPHUS F. HITCHCOCK,

The question was then put on agreeing with the report of the committee, and it was declared carried, and the report was referred to the Committee of the Whole, and ordered to be printed.

Mr. CHESEBRO—I would like to call for the reading and action upon the resolution I proposed on Wednesday.

The SECRETARY proceeded to read the resolution as follows:

Resolved, That the Senate Committee which have reported to this Convention the testimony in regard to the management of the canals of this State, and the departments contained in document No. 43, be requested, as soon as practical, to furnish to this Convention the evidence taken by them upon this subject since the date of their report, also a report of their conclusions upon said evidence, and that the same be printed for the use of this Convention.

Mr. CHESEBRO—I am informed there has been taken since the report was made by that committee a considerable amount of testimony, which should be added to that which we have already been furnished with by that committee, and I think it is proper that we should have from that committee, considering the large volume of testimony taken, a report of their conclusions on the evidence taken.

The question was put on the resolution of Mr. Chesebro, and it was declared carried.

Mr. BARNARD—I respectfully ask leave of absence for myself after this morning's session until Tuesday morning next.

No objection being made, leave was granted.

Mr. BERGEN—I ask the same leave for myself.

No objection being made, leave was granted.

Mr. E. BROOKS—I make the same request for myself.

No objection being made, leave was granted.

Mr. HITCHMAN—I also make the same request until Wednesday morning.

No objection being made, leave was granted.

Mr. FRANK—I will ask the same leave of absence.

No objection being made, leave was granted.

Mr. A. LAWRENCE—I would ask leave of absence for myself for the sessions of Saturday morning and Monday morning.

No objection being made, leave was granted.

Mr. SHERMAN—I ask leave of absence for myself for Monday next.

No objection being made, leave was granted.

Mr. BEALS—I ask leave of absence for myself until the evening session of Tuesday next.

No objection being made, leave was granted.

Mr. McDONALD—I ask leave of absence during the next week, commencing on Monday.

No objection being made, leave was granted.

Mr. MORE—I would like leave of absence until Tuesday evening next.

No objection being made, leave was granted.

Mr. A. F. ALLEN—I would like to know the number that have been excused. It seems to me that we are granting to many leaves of absence.

The PRESIDENT—The Secretary informs the Chair that thirty members have leaves of absence.

Mr. POND—I would ask leave of absence until Tuesday morning after the session of to-day.

No objection being made, leave was granted.

Mr. L. W. RUSSELL—I ask leave of absence for myself after the sitting of this morning until Tuesday morning next.

No objection being made, leave was granted.

Mr. WICKHAM—I ask leave of absence after this morning's session until Tuesday morning next.

No objection being made, leave was granted.

Mr. TAPPEN—I beg leave to ask whether we have passed the order of resolutions.

The PRESIDENT—The Chair will inform the gentleman that we have not.

Mr. TAPPEN—I call for the consideration of the resolution offered by me yesterday in respect to the report of standing committees that have not yet reported.

The SECRETARY proceeded to read the resolution of Mr. Tappen, as follows:

Resolved, That the several standing committees not heretofore reported, present their reports to the Convention on or about the 21st of August, unless otherwise directed by the Convention.

Mr. TAPPEN—I do not desire to have it understood that this Convention is unnecessarily pressing those committees in the performance of their duties; but I am aware it is the feeling of many members that the reports of several of these committees have been delayed quite sufficiently, in point of time, to enable them to have accomplished all that their duties required in furnishing those reports. I would be the last man in this Convention to ask these committees to report before they had fully considered the subjects committed to their care, and I do not now propose to press this resolution to a vote unless occasion becomes necessary to enable this Convention, and

the different members not upon these committees, to understand the subjects before they are called upon to act upon them. I think we should have the reports in many of these subjects of importance, at least a week or two before we are called upon to discuss and vote upon them, and if these committees make all possible haste now, for the first week or ten days, it would be a favor to the members of this Convention, who necessarily must vote upon these subjects, to have the necessary consultation with their constituents at home, whose views they learn by personal interviews or correspondence. It will take two or three weeks, at least, to elicit public opinion on these subjects for the information of the Convention. It is with that view that I ask the Committee on the Judiciary, the Committee on Finance, and the Committee on Cities (and they are the most important committees of this Convention), to indicate to this Convention about what time they will require to finish their labors.

Mr. BELL—Is this resolution amendable?

The PRESIDENT—It is amendable.

Mr. BELL—I would move, with the approbation of the mover, that the time be fixed for the 26th. Several members have been on two or more different committees and have given most of their attention to one particular committee, and are just entering upon the investigation of matters on the second.

Mr. TAPPEN—I accept the amendment.

Mr. HARRIS—The resolution as amended is equally objectionable to me as it stood originally. It implies, if it should be adopted, that this Convention supposes that the committees referred to in the resolution are not sufficiently diligent in the discharge of their duties. I object to having any such vote of censure from this Convention. I believe the committee with which I am connected have been laboring as diligently as any committee of this Convention, and they cannot be stimulated by any such resolution as this to advance their labors more rapidly. I object to the passage of any such resolution as this by the Convention. It implies a censure toward these committees.

Mr. HUTCHINS—I hope this resolution will not be passed. The first committee reported at the commencement of the session, and reported in great haste; and I think they gained nothing by making that report. So far as the reports have come in, I do not know that haste has advanced the action of the Convention after the report has been made. There are several reports now upon our table unacted upon, and they will probably consume at least ten days in their discussion. The report of the Committee on the Finances of the State must consume several days in discussion. We know that every committee that has not reported, no doubt has subjects to discuss, and it is a great deal better that these matters should be discussed in committee and the reports be made as perfect as possible, and that the committee be fully prepared to report their action to the Convention, so that when they do report their reports will not be picked to pieces by the Convention. I think the resolution is a reflection on the committees, and I hope the gentleman will withdraw it.

Mr. TAPPEN—I remarked in the beginning I had no desire to press the passage of this resolution at this time; but I have a desire to elicit from the several committees a statement of about what time they will complete their labors. Their labors are matters of great importance to this Convention. And it is also important that we should have some report at an early day. I beg my friend from Albany [Mr. Harris] to believe I have not the slightest intention of reflecting in any manner on these committees, and I do not think he will require me to disclaim that. It was not with any such purpose I offered the resolution. A great deal of time has been consumed by this Convention, and if we are to sit in judgment upon the reports of those committees, they should be submitted at an early day. I have no desire to take a vote on the resolution to-day, unless the Convention think proper to do so. I do not desire to appear as pressing these committees unnecessarily in the performance of their duty, but I have a desire that we should have some indication as to when we may have the result of their labors, and in that connection we have before us what took place here last evening. We were passing upon the report of the Committee on Town and County Officers; and we undertook to put in a provision which it was understood would be provided for in the report when it should be forthcoming from the Committee on the Government of Cities. Had the report of that committee been here last evening, it would have enlightened the Convention, and saved a couple of hours of the evening session given to the discussion of it.

Mr. DALY—I understood the gentleman as intimating when he called the resolution up, that certain committees of the Convention were holding back their reports. I am very glad he has corrected that statement. On behalf of the committee on which I am acting, the Judiciary Committee, I will say that it has met nearly every day this Convention has been in session, and its labors during yesterday may be taken as an indication of their character. It met at half-past eight o'clock in the morning, and after that the members attended this Convention. It met again about four o'clock in the afternoon, and sat until nearly seven. It is laboring as diligently as it is in the power of any body of men to do, and I respectfully suggest that no committee can state beforehand when it will be able to report. It will report when it gets through with its labors, and its members are engaged diligently in the performance of those labors, and that is all that any one can ask.

Mr. CURTIS—There can be no question that the Convention is extremely desirous to get through its business at the earliest moment, and there also can be no question that for that very reason every committee is diligently at work. I speak for the committee with which I have the honor to be associated. We meet daily; we work with the utmost industry; we are not yet in receipt of information from some of the departments which we have asked to be submitted to us. The inevitable result of this resolution, if it is passed, will be simply that some of the committees will report before they are prepared to

make such a report as the Convention have a right to expect. I trust it is the universal consciousness of the Convention that we are all as diligently at work as possible, and that the resolution will be either withdrawn or totally rejected.

Mr. E. BROOKS—I move for the present that the resolution do lie on the table.

The question was put on the motion of Mr. E. Brooks, and it was declared carried.

Mr. POND—I wish to call up the resolution introduced by me the other day relative to the compensation of Senators while sitting in the trial of impeachment.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That the Committee on Revision, to whom has been referred the proposed article "On the Organization of the Legislature," etc., be instructed to amend section — of said article by inserting therein, after the word "route," in the fifth line of said section, and before the word "the," the following:

"But the members of the Senate, when the Senate shall sit in the 'court for the trial of impeachments,' shall receive such compensation therefor as may be provided by law."

Mr. POND—The object of this resolution is to supply an omission in this article as adopted. The section, as it stands, only provides for the compensation of Senators, while they are acting in a legislative capacity, and it may be held as excluding all other compensation. In regard to the Speaker of the Assembly, who performs, it is suggested, more labor than any member, section seven provides for his additional compensation; but in regard to the members of the Senate, who constitute a portion of the court for the trial of impeachments, and have been engaged for long periods of time in that capacity, there is no compensation provided at all; and it seems to me, if there is to be a distinction between the Senate and the Assembly, this is making a distinction in the wrong way—giving the Senator, whose office ought to be equally as dignified as that of members of Assembly, less comparative compensation than members of Assembly should have under the provision. The object of the resolution, therefore, is to supply that omission, and allow members of the Senate, while acting in the court for the trial of impeachments, such compensation as may be provided by law.

Mr. ALVORD—I believe, in the history of this State since 1846, under the present Constitution, the Senate of this State have been called in session for the trial of cases of impeachment but twice, and in both of these instances the entire amount of time exhausted by the Senators in their investigations would be included within one month. We have established the doctrine of paying a certain fixed sum to the Senators, and to the members of the lower house of the Legislature of this State. I hope there will be no way and no provision put into the Constitution of this State whereby any extra allowance or compensation shall be given, beyond the one fixed here by salary or *per diem* allowance, to any public officer. I see no necessity for it. The Senate will not be called for the performance of extra duty, probably

in the next twenty years, for any greater length of time than they have in the past, and it will be a mere bagatelle, so far as compensation is concerned, if this proposition of the gentleman from Saratoga [Mr. Pond] shall obtain. I trust, therefore, sir, that the resolution will be voted down.

The question was then put on the resolution of Mr. Pond, and it was declared lost.

Mr. SCHUMAKER—I am requested by Mr. Law to ask an indefinite leave of absence for him on account of illness. He has been sick for several days at the Delavan House.

No objection being made, leave was granted.

Mr. GRAVES—I ask that the vote taken yesterday on the resolution offered by Mr. E. Brooks, relating to secret ballot, be reconsidered.

The PRESIDENT—The resolution is not in the possession of the Secretary, and the Journal upon which it was placed has been sent to the printer. The motion will be received, and lie on the table.

Mr. BELL—I offer this resolution:

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That when this Convention adjourn this day, it will adjourn until to-morrow morning at ten o'clock.

Mr. GERRY—I would like to ask the gentleman who proposes this resolution what would be the effect of it, in view of the standing resolution of the committee to take a recess until two o'clock.

Mr. BELL—The committee has seen fit to accept an invitation from a gentleman of this city to visit him this afternoon at five o'clock, and as we have been in session very constantly for the last week, it would be a little respite.

The question was put on the motion of Mr. Bell, and it was declared carried.

Mr. BAKER—At the request of Judge Masten, I ask leave of absence for him on account of sickness.

No objection being made, leave was granted.

Mr. L. W. RUSSELL—I move a reconsideration of the vote just taken. The Convention does not adjourn until to-night. It takes a recess at two o'clock.

Mr. BELL—I object.

Objection being made, the motion was ordered to lie on the table.

Mr. ALVORD—I move that this Convention adjourn this day at two o'clock.

The question was put on the motion of Mr. Alvord, and it was declared carried.

Mr. SMITH—I ask leave of absence for myself for Monday and Tuesday next.

No objection being made, leave was granted.

Mr. S. TOWNSEND—I offer the following resolution:

Resolved, That the Comptroller be requested to report to this Convention—

1. The value *per capita* of all the real estate in the several counties of this State, as exhibited by the last official assessment and census.
2. The value *per capita* of all the personal estate.
3. The value *per capita* of the real estate represented by incorporated or associated capital.
4. The value *per capita* of the personal estate represented by incorporated or associated capital.

Which was laid over for consideration under the rule.

Mr. KRUM—I offer a resolution and ask that it lie on the table.

The SECRETARY read the resolution, as follows:

The Legislature may amend the charter of any corporation, but only within the provisions and purview of the general law under which the corporation was formed.

The PRESIDENT—This resolution, by request of the mover, will lie on the table.

The Convention then resolved itself into the Committee of the Whole, on the joint report of the Committee on Currency, Banking, Insurance, and Corporations other than Municipal, Mr. E. BROOKS, of Richmond, in the Chair.

The SECRETARY proceeded to read the article reported by the joint committee, at the conclusion of which he proceeded to read the first section as follows:

SEC. 1. Corporations may be formed under general laws, but shall not be created or amended by special act, except for municipal purposes. All general laws (and special acts) passed pursuant to this section, or which may have been heretofore passed, may be altered from time to time or repealed.

Mr. BALLARD—In the printed report, the section does not precisely express what the Committee intended. I would like, with the consent of the committee, to have it read in the second paragraph "all laws passed pursuant to this section"—striking out the word "general" and the words "and special acts"—so that it will read, "all laws passed pursuant to this section or which may have been heretofore passed may be altered from time to time or repealed."

Mr. BELL—It occurs to me, sir, that it is but of very little importance to pass general laws on any subject, if the Legislature shall have the power to repeal or alter them at pleasure. It does not seem to accomplish the object for which they are passed, and it has been notorious during the existence of the present Constitution that much of the legislation in regard to cities, villages and corporations other than banking, have been altered and amended as if no such law existed. My idea is to frame this provision very much like the one in article eight, section seven, of the present Constitution in regard to the general law on banking. That general law was passed in accordance with the provision of the Constitution on that subject, and it has operated I think well. It has prevented any legislation or amendment on that subject, so that during the whole existence of this Constitution we have had no special act in regard to banking passed, nor have we found it necessary to materially alter the general banking law, but so long as we retain a provision in the Constitution that these general laws may be altered, amended and repealed, we will have the same kind of legislation that we have had for the last twenty years in respect to corporations. I should therefore prefer that all corporations and institutions of this kind should be confined to general laws, and this is the object of my amendment which I now offer to strike out from the third line of the first section all after the word "purposes," so

that it will read, "corporations may be formed under a general law, but shall not be created or amended by special act, except for municipal purposes."

Mr. BALLARD—If I have a correct understanding of the amendment of the gentleman [Mr. Bell] it is to strike out the last sentence of the section. The object the committee had in framing this section was to allow general laws to be changed from time to time by the Legislature, and likewise to allow special acts to be passed which appertain to municipal purposes, and to confine the action of the Legislature to those two classes of legislation, relating to corporations. This section, as reported, is the same as section one of article eight of the present Constitution, with the exception of striking out the words "and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws." If the members of the committee will look at the present Constitution they will see what the change is. It reads thus: "Corporations may be formed under general law, but shall not be created by special act except for municipal purposes, and in cases where, in the judgment of the Legislature, the object of the corporation cannot be obtained by general laws." That last expression is left out, and the reason that influenced the committee was that an end might be put to the granting of special privileges to a few persons by private statute, and likewise to relieve the Legislature from the countless applications for special charters, and the consequent attendance yearly of a thronging lobby; and it is believed by the committee that the tendency of striking out that clause would be to attain that object. All corporations, as now proposed, shall be formed under a general law, analogous to the law in regard to manufacturing and mining corporations, and to confine special statutes relating to corporations for municipal purposes, and it was believed by the committee that that was necessary; that the Legislature must have power in regard to municipal corporations to pass special acts, and that this amendment, as we understand it, conforms to the report of another committee which has not yet been made in regard to the powers and duties of the Legislature, that their proposed amendment contains a provision confining the action of the Legislature in regard to corporations to general laws, while special acts are confined to municipalities, and thus keeping way from the Legislature the countless applications for special charters and special rights.

Mr. ALVORD—I am opposed to the amendment of the gentleman from Jefferson [Mr. Bell] because it compels the enactment of general laws, which, after they shall be enacted by the Legislature for all practical purposes become parts of the Constitution. That is the meaning if not the intention of the amendment of the gentleman from Jefferson [Mr. Bell]. That will be the practical effect providing the courts shall construe the rights of the Legislature as he seems to intend by his amendment. It may be well enough to express within the body of the Constitution as the committee have here, the right of the Legislature to alter, modify or repeal acts; but it strikes me

that unless there is an express provision in the Constitution to the contrary, they have, in the absence of denial that right in the Constitution by intentment, or by implication such right, that the body which makes the law have the right, nothing being said to the contrary by their superiors, to alter, modify or repeal that law. In order to avoid all difficulty, it is well expressed here by the committee, that that power of repeal, alteration and modification shall reside in the Legislature, and it should reside there, as I said in the opening, if we do not want the general laws which they pass to become parts and parcels of the Constitution.

Mr. BEADLE—In considering the eighth article of the present Constitution, the committee to whom was referred the subject of corporations thought they discovered what has been so often referred to here in this Convention, as the great source and cause of legislative corruption in that section, or in that portion of the first section of the eighth article which has been stricken out by this committee, and familiarly styled "the India rubber clause." They found such an opening there, and such elasticity, as a certain eminent legal gentleman once described as being one through which he could drive a coach and four, meaning thereby, I suppose, that figuratively he could drive four horses with a post-coach attached to them through it without injury either to the coach or to the article in question. I suppose if that learned gentleman had lived to this day, and this section of the article had been presented to him, he would have said, as familiar with the subjects around him, that he could run a locomotive and a train of cars through it and not injure the Constitution in the least. Such things have been done. Railroads, with all the appurtenances thereunto belonging, have by scores gone through this section of the eighth article of the Constitution, and yet there is no question but what the intent of the framers of the Constitution of 1846 was that acts specially conferring grants and valuable franchises should be excluded from the province of the Legislature. And if you refer to the acts of the year 1848, and for the few years subsequent, you will find the number of special acts very small. I think all of the acts passed by the Legislature of 1848 are comprised in less than three hundred and fifty. If you refer to the bills presented to the Legislature at the last session, particularly that branch that sits in this chamber, you will find over twelve hundred were presented, of which probably six hundred referred to special acts of incorporation showing that from 1847, the time of the adoption of the present Constitution, or the time it went into effect, till the present time, this special legislation had become a growing evil, and hence in the minds of the committee it was thought better to strike out entirely the portion referred to, and to leave in the body of the Constitution the portion to which the amendment of the gentleman from Jefferson [Mr. Bell] refers, to wit, allowing an amendment to all general laws that may be passed under this article. And although legal gentlemen here seem to agree in the fact that the power to enact a law carries with it the power to repeal, yet fearing that a question might

be raised, the committee having this matter referred to them preferred to leave that section in as it has been for the last twenty years, and while the committee thought that there was a great source of legislative corruption, I myself am not one of those who would travel from Dan to Beersheba and say all is barren. I believe there have been instances within these legislative halls within the last few years, even, of integrity and directness of purpose that does noble credit to the representatives of the State of New York. I, myself, an elector of this State, feel that in this Assembly I am represented, and I will not stand up here or elsewhere and say that the men I send here to represent me are men full of fraud and corruption. No, Mr. Chairman, I believe if the members of this Convention were enabled to come here and look at all the influences and all the motives brought to bear upon the representatives of the people here, they would be ready to say the wonder is in what we have escaped, rather than that which has fallen upon the people of this State. Sir, your committee believe, and I believe, that in the adoption of this section of the eighth article as it has been reported by the committee, you will find that such action as this Convention took yesterday in providing for a large mass of local legislation, that that which has been a stigma and which has brought reproach upon the members of the Legislature of this State will be to a very great extent avoided.

Mr. KRUM—I was one who, with two others of the joint committee, united in the minority report against the provision which is now under consideration. I was one among those three who believed, and who yet believe, that it is utterly impossible under any general law or laws that may be passed to form corporations that shall meet all the wants and requirements of this great State. Now, what is proposed by the amendment of the gentleman from Jefferson [Mr. Bell]? Not only to leave that clause as reported by the majority of this joint committee as it now stands, but in addition thereto to say by Constitutional enactment, that after those general laws have once been passed, that the Legislature shall have no authority to alter or repeal them.

Mr. BELL—Will the gentleman allow me to ask him a question?

Mr. KRUM—Yes, if it does not come out of my time.

The CHAIRMAN—There is no limit to time.

Mr. BELL—Is the gentleman not of the opinion that the Legislature will possess the power to alter or amend a general law, whether it is expressed in the Constitution or not? With that understanding I made the amendment.

Mr. KRUM—It may very well be that the Legislature would have that power, and it may be that the Legislature would not have it. I believe that our laws should make that power beyond all doubt and beyond all contingency; therefore, I would leave the clause in the Constitution. It may be bold in me, as against the sentiments that have been expressed by various delegates upon this floor, to stand up in my place and take the broad position that we cannot frame general laws under which incorporations may be had, to meet

the wants and requirements of society. But nevertheless, sir, whether it may be considered bold or whether it may not be considered bold, I have my ideas upon this subject, and I have the reasons for the faith that is in me, and those reasons I desire to present to this Convention. Now, gentlemen of this committee, I desire to call your attention first to the general railroad law. There is a provision within the general railroad law upon the statute books of this State which prohibits and forbids any railroad company to use iron in the laying of their rails that weighs less than fifty-six pounds to the lineal yard. That provision was put into the general law for the reason that it was deemed unwise and unsafe to the traveling public to permit any railroad corporation to use a rail of less than fifty-six pounds to the lineal yard, and I presume every member of this committee will say that that provision was wise. Now, while we say that, will we also say that no railroad company can be formed in the State of New York where it would be wise to permit such a company to use a rail of a weight less than fifty-six pounds to the lineal yard. If it is wise to do so, sir; if the requirements of a railroad which is to be constructed are for a rail of less than fifty-six pounds; if the community where it runs desire to use such a rail; if the public safety can be secured by a lighter rail; why not permit the lighter rail to be used? Why not permit those parties who own the railroad, the railroad corporation itself, to go to the Legislature, and upon such a state of facts as they may present to that Legislature, get that Legislature to pass a law authorizing them to use a rail of a less weight? How can it be done, sir, save by special act? How can you put such a remedy in the general provision, in any general law which shall be applicable to every case? We have a railroad in my town, the town of Schoharie, running from that village to Central Bridge, built with light rails. We are running upon that railroad not a dummy, not a locomotive, but a small engine between a dummy and a locomotive. We came to the Legislature and asked for power to use a rail of a weight less than fifty-six pounds. The Legislature granted us that right, and we use a lighter rail. We are running our road with perfect safety to the passengers and to the traveling public. We could not have built the road, because of its great expense, had we been compelled to use a fifty-six pound rail. Again, our road is five miles long. The Legislature authorized us to take twenty-five cents from every person who traveled over it. Under our general railroad law our fare would be about ten cents. Now the railroad is paying its way, the community is satisfied to pay the fare; but if we could have obtained no special provision from the Legislature we could not run, nor could we have built our railroad. In looking through the various statutes of this State you will find various acts specially for the purposes I have mentioned, and I ask gentlemen to point out to me the manner in which those things can be obtained by general law. Again, railroads are built all over the State, and in the act of incorporation towns along the line of that road are permitted to subscribe to the capital stock. Under the general railroad law, towns cannot subscribe to the capital stock of railroads. Under the general law towns cannot become stockholders, and I believe it is now conceded, and well determined, to be the true way to build railroads, to permit towns along the line through which the road runs, benefited by the road, whose property is increased in value by reason of it, to become stockholders in that road. How is that to be done under the general law? With regard to ferries and bridges, there may be, and there are various cases in the State of New York, when it becomes necessary to create a monopoly in the building of a ferry or a bridge. A certain corporation may be willing to build a bridge at a certain point over a certain river, provided it can get in its charter a specific provision that no one shall build another bridge or ferry within a certain distance from the bridge or ferry it proposes to build. Now, is it not right they should go to the Legislature and create that monopoly? Is it not right that the public should have the benefit, and that the corporation should be protected in the use of the bridge so built, and which the public are using, by the prohibition of another bridge within a certain distance? Can there be any general law framed under which an incorporation of ferries and bridges can be built, by which it shall be said that within so far from the location of every bridge, no other bridge shall be built? That must depend upon each particular case, and truly, it seems to me, that the Legislature is the proper custodian of this discretion. Again, sir, in looking through the general acts of incorporations, you find this provision, that the capital stock of no incorporated company shall be lessened or diminished unless by application to the Legislature. That is a wise provision. After capital stock has once been fixed in amount, and after the stockholders have subscribed to it, on the faith of that capital stock, it is unwise that the capital stock should be diminished, unless for cause shown. Who is the proper person or what is the proper place to apply to for a reduction of the capital stock? Who but the Legislature of the State of New York, in whom all these questions of discretion shall be centered and left? Now, we find upon our statute book this general provision also. It is deemed wise, and the Legislature in their wisdom have enacted it—that no person shall, by his last will and testament, devise to certain corporations more than one-half of his property. That was deemed wise and proper; and perhaps no one upon this floor will find fault with that provision in the general law. Now, sir, some one desires to endow a college; he desires to give his funds to that college, and when he comes to die he desires to will to it a certain amount of his property, for instance, three-fourths of all he has got, after providing for those depending upon his bounty or charity. Under the general provision, no right to do so can exist; and we find upon the statute book to-day an instance where a college in the city of New York was incorporated, and Daniel Drew, by a special provision in the act of incorporation, was permitted to devise to that institution such portion of his property as he de-

sired, notwithstanding this general law, and who shall say that the Legislature was not wise in giving to Daniel Drew that discretion, notwithstanding this general law? I cite these instances, Mr. Chairman, and gentlemen of this committee, for the purpose of showing you that it is utterly impossible in all the various wants and requirements of the people of the State of New York, under any general law that may be framed to meet them. I desire, sir, to be upon the record on this question and when certain communities go the Legislature of the State of New York and ask something that community desires, and which the Legislature are willing to grant, which it is wise should be granted, I desire to have it said that so far as my vote is concerned, I was willing to give them that right, and not to prohibit them by reason of some general law. But it is said, indeed, the only argument that is used against it, the only argument that is brought before this committee, and upon which is sought to hinge this provision as adopted by the committee, is that the Legislatures are not fit to be trusted. What! the Legislature of the State of New York, in whom is vested absolute and supreme power, save as restricted by the Constitution, are not the proper custodians of this discretion; are not to be trusted with it! What a commentary, sir, upon the Legislature of the State of New York! Are we, as delegates to this Convention, satisfied to place ourselves in the position of saying that we will do that which we ought not to do, so far as the needs of the community are required, in order to place upon the record the fact that the legislators are not fit to be trusted. Gentlemen and Mr. Chairman, I have never been a member of the Legislature. If I had a reputation to lose, I would thank my people (as I guess they will), to keep me away from it. If I had a reputation to gain, I would thank them not to send me there. Not because I have not respect for the Legislature of the State of New York, but because I have an utter contempt for these wholesale charges of corruption that are put forth in all the newspapers and put forth by many of the people of the State. Tell me that the Legislature as a *body* is corrupt! I will not believe it. That in the Legislature are corrupt men, is undoubtedly true. That in every position in public and private life there are corrupt men, is also true. It has been the history of all governments; it has been the history of all legislatures and parliaments; and place in the Constitution whatever restrictions you may, surround it by all your pretended safeguards, and that same fact will continually be true. What, then, is the remedy? Is it, sir, in tying up the Legislature, in placing restrictions around them, so that they cannot be corrupt? Is it in cutting off the public welfare, simply to guard the Legislature? No; it is in electing honest men, and sending honest men to the Legislature. Mr. Chairman, having thus presented my views upon this question, and having them before the committee, and having succeeded in placing myself upon the record, I have said all that I desire to say.

Mr. BELL—With the permission of the Convention, I would like to say a word. I presume no member of this committee will controvert the fact that it is the duty of this Convention to

remedy as far as possible all existing evils in the present Constitution. Now, sir, if gentlemen will look at the present provision of the Constitution on this subject, they will see that it is very objectionable, and furnishes a pretext for most of the special and unnecessary legislation in regard to corporations. Under the clause "in case where, in the judgment of the Legislature, the objects of the corporations cannot be attained by general laws, they may be created by special act." This exception or qualification destroys the salutary effects which the framers of our present Constitution designed to secure by requiring all corporations to be formed under general laws. The Legislature is continually besieged by applications for special charters for all sorts of corporations, alleging that the objects sought cannot be attained by general laws. Hence by the "judicious use of means" charters are procured with "special privileges" which are alike subversive of the general law and the general good of the people. So far has this abuse gone that charters have been given for the incorporation of clubs and societies, for "yachting," "racing," "hunting," "fishing," "sporting," "gymnastic," "athletic," "social and recreative" purposes. I am decidedly opposed to any provision that will permit the continuance of such abuses. Sir, in looking at the article reported by the committee, while they have not retained that clause precisely as it is in the present Constitution, yet, in my opinion, as the language now stands in the section it is subject to the same objection. But, as the gentleman from Cortland [Mr. Ballard] has amended it in that particular by striking out these objectionable words, and as it is thought by the committee generally, that it may be well enough to amplify the provision by expressing in the article itself that the Legislature shall have the power to alter and amend general laws, which I think is entirely unnecessary, for it is a well-settled principle that the power which can create can also destroy; therefore, inasmuch as it will do no harm, I will accept the amendment, if it be in order, of the gentleman from Cortland [Mr. Ballard], and so modify my amendment as to strike out the words "general" before the words "laws and special acts," and this will accomplish the entire object I had in view by striking out the clause. I will, therefore, accept the amendment.

The question was then put on the amendment of Mr. Bell, and it was declared carried.

Mr. SEYMOUR—I move to amend by striking out the words "or amended." The object of this constitutional provision is undoubtedly to prevent a great deal of useless legislation, legislation not only useless, but often corrupt. It is conceded, I think, to be the universal sentiment of the people of this State that no part of our legislation is more dangerous to the general interests of this State, nothing more likely to be mingled with bad practices or with corruption in the legislative body than the legislative action connected with the creation of incorporations. If you look at the statute book you will find that a very large portion of our legislation was formerly occupied with the creation of corporations. One object of the provision of the Constitution of 1846 was, as far as practicable, to prevent that, by provid-

ing that corporations should be created under general laws. Now, sir, the report of the committee on this subject provides not only that corporations shall be created by general laws, but it provides that they shall not be amended by any special laws. It assumes the fact that when a body of men meet together for the purpose of determining the provisions which they will insert in the article of incorporation which they are permitted to form under this general constitutional provision, they have so much foresight that they can conceive and provide against every imaginable contingency which may occur in the course of their corporate business. The matter has been well illustrated by the gentleman from Schoharie [Mr. Krum] in the case of the railroad which he cited. The same thing will occur in a thousand other cases where the most vigilant foresight and the greatest experience in business gentlemen may have, who sit down for the purpose of settling upon an article of corporation under a general law, will not enable them to provide for the contingencies that may arise in the future. Unless we insist that those who wish to avail themselves of these general provisions shall be endowed with foresight sufficient to meet all the contingencies of their multifarious business, we must give them the privilege to come to the Legislature, if necessary, for the purpose of submitting the expediency of modifying the privileges they have gained under the general law. Therefore, it seems to me, that it is an absolute necessity arising out of the very nature of things that there should be this privilege left to those corporations which are formed under the general law; if they find their act of incorporation shall need amendment by way of restriction or by way of extension, they should have the privilege of coming to the Legislature and submitting the question whether that act of incorporation which they have under these general provisions should not be modified. The proposition presented by the committee would seem to assume that the act of incorporation to be formed under a constitutional privilege, or under general laws passed in pursuance of it, should be so perfected that not only the interests of corporators themselves would never demand any modification, but that the interests of every individual, either of the corporation or of the community, never should compel them to apply to the Legislature for a modification or restriction of the rights which their particular company has gained to itself under the general law. I am aware that the objection that will be suggested to many minds in this Convention is that this brings, after all, the whole subject back to the Legislature, and thus we do not avoid the evils we hoped to avoid by passing a general law. But in this business of laying the foundations of our commonwealth broadly in this Constitution, we must resolve somewhere whether the Legislature in the future shall be trusted at all, and if so, how far. Now, I am not disposed, in regard to matters of this kind, to say that no Legislature in the future shall be deemed sufficiently honest, intelligent, and honorable to consider and decide questions of this kind as they shall arise, to decide as in other matters of modification, extension or restriction of legislative grants. I do not wish to have it

understood that this Convention believes that forever hereafter, under the Constitution which we are to propose, there will be no Legislature honest enough to do what is right between citizens and between corporations and citizens. I am not prepared, for one, to say that all matters of this kind should be withdrawn from legislative consideration. There seems to be a necessity—and it is a necessity that always exists in every government, that we must trust the representatives of the people—aye, to go back of that—trust the people themselves. When it is the deliberate opinion of the representatives of the people in this Convention or elsewhere that the people whom they represent have become so corrupt that they are not to be trusted, then a fundamental change in the government must ensue. Whenever it is the opinion of this body that the representatives of the people, assembled for the business of legislation, have become so corrupt that they cannot be trusted then the government itself must be pronounced a failure. We must repose this power somewhere, and I know of no better place to repose it than with the representatives of the people. The powers which these corporations derive are derived from a law passed by the Legislature, and the Legislature should be clothed with power not only to modify the general laws they may have passed, but to pass those special laws that may be necessary for the proper working of the general system. No general provisions such as are proposed here can meet all cases. There are and there always will be an abundance of specialties, and my amendment is offered for the purpose of enabling all citizens in a community whether corporators themselves or others to come before the Legislature and present such cases as may from time to time arise, and to obtain such relief as justice may require.

Mr. BEADLE—I agree most heartily with the gentleman who last addressed the committee, particularly in that portion of his remarks in which he admits, in answer to himself, that his amendment places this section back precisely where it is in the Constitution. Nothing will be gained and no advance made in a much needed reform, but the legislation of the last few years will be continued, with increasing scandal. If the amendment of the gentleman from Rensselaer [Mr. Seymour] be adopted, it will be only necessary for any set of individuals to arrange themselves under the provisions of this article and then come to the Legislature and ask for anything, ask for an amendment of their incorporation which shall embrace franchises as valuable and as extensive as any granted within these halls. In anything which I may have said, or anything I may say with regard to the Legislature or with regard to the people themselves, I wish to have it understood that I defer to no man in my views or my feelings with regard to the people of the State of New York. I know somewhat of the people; my confidence in them has been greatly increased in view of the trials through which they have passed. Within the last six years it has been my privilege to see instances of heroism and devotion from the common people that I never expected to witness. I

have seen men poor—so poor indeed that their only possession was a single cow—voluntarily giving that cow for the purpose of raising volunteers to defend this government. From that hour I have had no doubt of the integrity and of the patriotism of the people of the State of New York. Sir, I wish to offer an amendment to the section. I would substitute after the word "created" the words "or their powers increased or diminished." The word "amended" I think is not a fortunate one. I think the Legislature cannot amend corporations. For that reason I propose that these words shall be introduced in place of the word "amended." I would say one word with reference to the objection urged by the honorable gentleman from Schoharie [Mr. Krum]. It occurs to me that the objections urged by him can easily be provided for in the general law, as it may be passed by the coming Legislature with reference particularly to a railroad running from Central Bridge up to his place of residence. Railroads as short as that have been constructed, and undoubtedly will be constructed in various portions of the State. I think it will be very competent and proper for the Legislature, in passing general laws in regard to railroads, to make distinctions with regard to railroads as short as that, giving the privilege of using a lighter rail, and a lighter engine. I think the objections urged by him are very easily removed. And so with reference to bridges and other things which he thinks constitute very great objections.

Mr. OPDYKE—I hope the amendment of the gentleman from Rensselaer [Mr. Seymour], will not prevail. It will be seen that if that word is stricken out, it renders the section inoperative and nugatory; because a corporation might be framed under a general law, for a very proper and even beneficent purpose, and afterward obtain from the Legislature amendments which might transform the corporation into one that will be dangerous to society. I think the experience of the people of this State has satisfied them that special legislation is, in every sense, a very great evil. In the first place, it is grounded on a wrong principle. The title of every such act should read that "All the citizens of this State, save A, B and C, the incorporators, shall be excluded from the exercise of whatever rights the act of incorporation confers." It is unjust, inequitable, and a blot upon our statute book. Now, if the Legislature be permitted to amend acts of incorporation, framed under general laws, the gate is thrown wide open for every variety of special legislation. In regard to what the gentleman from Rensselaer [Mr. Seymour], and the gentleman from Schoharie [Mr. Krum], has said in reference to the inconvenience of general laws, and the impossibility of meeting all the exigencies that arise in society, I would suggest a different remedy. If amendments be really needed to meet such difficulties they should be granted only within the limits of the general law authorizing the incorporation. The Legislature may be safely authorized to amend, provided the amendments are within the limits and purview of the general law under which the corporation is formed. Nothing beyond that can we do without utterly abandoning the effort to shut out

special legislation. For myself, I do not believe it is necessary to strike out the word at all. I believe that the better plan would be, if a general law be found insufficient to meet all the exigencies of society, to amend that general law to meet cases that have not come within the purview of the law as it is framed. I do hope the amendment now before us will not prevail. If it does we might as well abandon the provision altogether.

Mr. KRUM—I simply wish to say that the amendment proposed by the gentleman from Chemung [Mr. Beadle], "or their powers increased or diminished," would leave the section as it now is. My own idea is that the amendment of the gentleman from Rensselaer [Mr. Seymour] is the amendment which should be adopted. That was the position I took before the committee: that general laws should be passed for the incorporation of all subjects or things, that everybody and everything should be incorporated under a general law, and when the necessity arises for an amendment such corporations might apply to the Legislature for amendment, leaving it to the discretion of the Legislature to grant it or not.

Mr. SEYMOUR—It seems to me that the amendment offered by the gentleman from Chemung [Mr. Beadle] would entirely nullify what was intended to be gained by the amendment which I had the honor to present. My amendment, as I explained, was to leave unrestricted the power of amending by special legislation. I shall have no objection if there be added to the section a general provision like that suggested by the gentleman from New York [Mr. Opdyke], to the purport that all amendments authorized by the Legislature shall be consistent with the general purview of the act of incorporation, so that the company shall not be permitted, under a general law, to incorporate itself for one purpose and then procure an amendment by the Legislature giving it powers to act as an incorporation for another and a very different purpose. I hope such an amendment may be added, that a company or corporation can apply for and receive only such an amendment of its charter as will be in consonance with the provisions of the act under which it was incorporated. But it seems to me that the amendment proposed by the gentleman from Chemung [Mr. Beadle] will leave the section very much as it stands now. I hope it will not be passed.

Mr. BELL—I am decidedly opposed to the amendment offered by the gentleman from Rensselaer [Mr. Seymour]. It substantially leaves the provision on that subject as it now stands in the present Constitution. I am of the opinion that all of us have seen the evil effects of the multiplicity of bogus and swindling corporations. The objection of the gentleman from Schoharie [Mr. Krum] that general laws cannot provide for specific objects, can be obviated by a provision of the general law that railroads of a limited length and for certain purposes, may be allowed to use rails of less weight to the lineal yard than those which carry passengers, and are run at a high rate of speed.

Mr. KRUM—How would you, upon those

roads, regulate the fares? Would you regulate the fares in proportion to the distance of the road?

Mr. BELL—I am of the opinion that the fare can be regulated on these short roads as well by a general act applicable to all short roads built for certain purposes as on a long road carrying passengers. I see no difficulty in classifying roads and the purposes for which they are built, and the speed at which they may be run.

Mr. KRUM—Then would you make the fare depend on the length of the road? Would that be the criterion?

Mr. BELL—Not necessarily. This whole subject can be left a little flexible, so as to conform to the length of the road and the purposes for which it is to be used, as well in regard to the fare as to the weight of the rail. I see no difficulty whatever in that regard. In endeavoring to amend the Constitution in this particular, where it has proved deficient, I hope we shall not by any language run into the same difficulties and absurdities under which we now labor. It is no imputation on the uprightness of the Legislature to incorporate certain specific principles in the Constitution. If there is any subject on which we are required to make specific provisions, it is on this very subject of corporations. I am of the opinion that the amendment offered by the gentleman from Chemung [Mr. Beadle] is much the better one. It expresses its object more clearly. I am of the opinion the word "amend" could not properly be applied to a "corporation." It should be applied to "laws." But as it now stands in the section, if I understand the proper import of the word, it applies to "corporations. I should prefer instead of the word "amend" the phrase that "their powers may not be increased nor diminished." I am certainly in favor of the amendment of the gentleman from Chemung [Mr. Beadle].

The question was put on the amendment of Mr. Beadle, and it was declared carried, on a division, by a vote of 61 to 30.

The CHAIRMAN—The question now is upon the amendment of Mr. Seymour, to strike out the word "amend."

Mr. KRUM—I move a reconsideration of the vote just taken upon the amendment of the gentleman from Chemung [Mr. Beadle], for the reason that there were some gentlemen who voted under a misunderstanding.

The question was then put on the motion of Mr. Krum, and it was declared lost.

The question then recurred and was put on the amendment of Mr. Seymour as amended by the adoption of the substitute of Mr. Beadle, and it was declared carried.

Mr. A. J. PARKER—The committee have now provided for corporations other than municipal in such a mode as will require an amendment of the general law which will be applicable to any particular case that may occur. But there is no restriction in this section in regard to corporations other than municipal. They are excepted. I think there should be a restriction in regard to them.

Mr. RATHBUN—That matter is in the hands of the Committee on Cities and Villages; it is not referred to this committee.

Mr. A. J. PARKER—Should it not, properly, be inserted here?

Mr. RATHBUN—This is the report of the Committee on Currency, Insurance, and Corporations other than Municipal.

Mr. A. J. PARKER—Has there been no report from that committee?

Mr. RATHBUN—There has not.

Mr. A. J. PARKER—It seems to me it is proper to insert it here, for the reason that this section as it now stands excludes municipal corporations. It seems to me, therefore, proper that provision should be made here for municipal purposes, and I offer an amendment to this section which will remedy the existing evil. All of us know very well that the session laws are filled with village corporations—sometimes a single act covering fifty or sixty pages. Each one is, to a great extent, a mere repetition of the general law in regard to the organization of village corporations. I think this evil should be remedied, as it can be, by an amendment of this section. Although it is true you cannot apply here to the fullest extent, a provision for municipal corporations; yet to a certain extent I think it can be done. I propose, therefore, to insert in the third line of the third section, after the word "purposes," the following:

"Municipal corporations shall also in all cases be formed under general laws. But where a special act shall be passed in regard to a corporation so formed, its provisions shall be confined to matters in regard to which it differs from the provisions of the general law."

My object is that all municipal corporations shall, in the first place, be formed under general laws to be passed by the Legislature.

Mr. RATHBUN—I rise to a question of order. I submit the amendment is not germane to the subject, and ought not to be allowed. The committee was confined to a special class of corporations, excluding municipal corporations. That subject is referred to another committee who have not reported. I submit it is improper and irregular to incorporate in this article matters that are being considered by another committee.

Mr. A. J. PARKER—I am entirely willing to reserve it, if that is the judgment of the committee.

The CHAIRMAN—The Chair is of the opinion that it would be better to leave it to the Committee on Cities, and would call the attention of the gentleman from Albany [Mr. A. J. Parker] to the preamble of this report, which speaks of the consideration of corporations "other than municipal."

Mr. A. J. PARKER—I will withdraw my amendment.

Mr. ALVORD—I move to strike out "except for municipal purposes." I make the motion for this reason: if, as has been stated here, in the point of order taken by the gentleman from Cayuga [Mr. Rathbun], this committee have nothing to do with municipal corporations, they should have no expression in regard to them in the article, and for another reason, if the committees who are intrusted with municipal corporations should see fit not to make some general provisions of this kind, then shall there not, by implication,

even if it is not the sense of the Convention, be given power to the Legislature a right to incorporate municipal corporations by other than general laws. I think, in that view of the case, those who in this Convention are opposed to any special acts of the Legislature for municipal purposes have a right to ask that this proposition be stricken out. Because if it happen to remain here, although clearly showing that this committee have not presented their report in reference to municipal corporations, it will be left in the Constitution, giving by implication this power to the Legislature.

Mr. A. J. PARKER—It seems to me the motion now made to strike out those words "except for municipal purposes," shows we must necessarily consider this subject here to some extent. Now, striking out those words, and making what we have adopted applicable to all corporations would be necessary to subject municipal corporations to precisely the same rules that we have applied to others. I admit there is some difficulty in that respect. I now propose by my amendment to apply precisely the same rule.

Mr. ALVORD—I will modify my amendment by inserting the words "except as herein otherwise provided."

Mr. A. J. PARKER—I have no objection to it in that form. But if that is adopted I will proceed with my amendment afterward.

Mr. BARKER—I hope the amendment of the gentleman from Onondaga [Mr. Alvord] will not prevail, because it will open discussion, and my friend from Albany [Mr. A. J. Parker] will have up before the committee the very thing which has been ruled out of order.

Mr. VEEDER—I desire to say a single word, as a member of this committee. Those words should properly be placed in brackets, as you will find in the section below. The committee, as I understand it, did not pass at all upon the question of municipal corporations; but finding it in the section, they left it there, lest they might trespass upon the rights of the Committee on Cities. In my judgment, the amendment of the gentleman from Onondaga [Mr. Alvord] will meet the purposes of the Convention at this time. By striking out the words "for municipal purposes," and inserting the words "as herein otherwise provided," the question may be disposed of.

The question was put on the amendment of Mr. Alvord, and it was declared lost, on a division, by a vote of 33 to 49.

Mr. FOLGER—I move to strike out in the fourth and fifth lines the words "which may have been heretofore passed," for this reason: there may have been laws passed in relation to corporations which, by the force of constitutional and other law, have become a contract between the people of the State, acting through their legislative power, and the recipients of the charter created by those laws. The Constitution comes in, and by this provision, in words at least, affects not only laws which a future Legislature may pass, but all general and specific acts which have been heretofore passed. Now, although I do not hold that we can impair any law which amounts to a contract, yet I do not think we should incur the danger by seeming to give to the Legislature the

power of repealing any of these former acts—of opening the door to the raising of such a question. There is, for instance, the act creating the Manhattan Company. It has always been conceived, as I understand it, to be a contract between the people and the recipients of that charter. Might not this provision excite the attempt to claim, on the part of the Legislature, a right to repeal such an act? And is it not wise to shut out the opportunity for such an attempt?

Mr. BALLARD—The object of the committee in framing that language was to continue in the present Constitution the language of the old Constitution, which reads that "all general laws and special acts passed in pursuance of this section may be altered from time to time or repealed." The present amendment was interposed to preserve the power which exists in the present Constitution. In regard to the Manhattan Bank, if they have vested rights, they cannot be taken away by this constitutional amendment. It seemed to the committee, therefore, that the best way was to perpetuate the language that is employed in the present Constitution.

Mr. FOLGER—The language not only reaches back to the Constitution of 1846, but much further. It reaches back to the beginning of the government, ever since the Legislature was established; and any law which may be found on the statute book, so far as the language of this provision is concerned, may be repealed by the power which the report of the committee proposes to confer upon future Legislatures. I doubt whether a provision should be adopted by which that power seems to be given.

Mr. BALLARD—I want to ask the question whether, if this is adopted, it would take away vested rights now existing?

Mr. FOLGER—Is it necessary to meet that question? Can we not dispose of it here better than to excite a question to be disposed of in the courts?

Mr. KRUM—Did not the Constitution of 1846 reach back in the same way?

Mr. FOLGER—I think not. The language of that instrument is different from that of the article proposed by the committee.

Mr. KRUM—The section is: "All general laws and specific acts passed in pursuance of this section may be"—

Mr. FOLGER—"In pursuance of this section"—that must be laws which shall be passed hereafter. But here is a section proposed by the committee, with the word "heretofore"—"all laws which may have been heretofore passed." All laws from 1777 up to this time. This relates back.

Mr. PAIGE—If that is stricken out, the Legislature will be deprived of power reserved to it under the Constitution of 1846. In reference to corporations having vested rights, these rights cannot be impaired by an act of the Legislature passed by virtue of any provision in this Constitution, as these rights are protected by the Constitution of the United States. Therefore it strikes me that this motion to strike out ought not to be entertained.

Mr. BARKER—Corporations have to rely in a great measure upon the faith of Legislatures that they will not repeal the acts upon which their

rights are secured. Suppose the amendment of the gentleman from Ontario [Mr. Folger] prevails, it will read in this wise: "All laws passed pursuant to this section may be altered from time to time and repealed." Hence, if a corporation is formed under general laws thereafter, the Legislature may repeal that general law and the corporation falls. Corporators have to rely upon the faith of the Legislature to preserve their rights.

Mr. FOLGER—My criticism is upon the words "which may have been heretofore passed."

Mr. BARKER—The object of that proposition, in my judgment, is this: Heretofore corporations have been created by special act, and with very narrow powers; these corporations may have their acts of incorporation altered and amended by special legislation under this reserved right. In my judgment it should be preserved for that purpose.

Mr. RUMSEY—It seems to me that the amendment proposed by the gentleman from Ontario [Mr. Folger], should not prevail, and these words to which he excepts are not subject to the criticism he makes upon them. It is not, I apprehend, intended, in respect to a very large number of laws heretofore passed, that the Legislature shall be deprived of the power to alter and amend those laws. If you leave these words in it cannot affect any vested rights; it can affect only those laws where the Legislature has the right to repeal them. Now, as I understand it, the rights of the Manhattan Company are reserved to them by the Constitution of the United States, because there is a contract by virtue of which the Manhattan Company are to do certain things in the city of New York upon the consideration of having certain privileges. They have performed their share of the contract, and the courts say they must keep their rights, because they have paid for them. This doctrine of contracts does not apply with regard to a large class of corporations that have been created on the part of the State, and thus they will be within the provisions of this amended Constitution.

The question was then put on the amendment of Mr. Alvord, and it was declared lost.

Mr. ANDREWS—I move to amend by adding after the word "passed," in the fifth line, the words "relating to corporations." It would seem that the construction, otherwise, might be: all laws passed pursuant to this section, or which may have heretofore passed in pursuance of this section, which could not be true, as it would relate to all laws, and not to laws embraced in the subject of the article.

Mr. REYNOLDS—Would not the same result be reached by inserting "pursuant to this section," so it will read "all laws passed, or which may have been heretofore passed pursuant to this section."

Mr. POND—I submit whether the words "except municipal" ought not to be added. I move so to amend.

Mr. ANDREWS—I move to amend the amendment by inserting the word "such" after the word "all" in the third line.

Mr. POND—I accept that amendment.

Mr. C. C. DWIGHT—I submit that the addition of the word "such" after "all" renders

necessary the words "relating to corporations."

Mr. ANDREWS—The difficulty, it seems to me, is this, the previous part of the article relates to prospective laws, corporations that may hereafter be formed under general laws hereafter to be passed. The word "such" properly qualifies that.

Mr. COOKE—I will suggest whether the word "such" would not be objectionable there, on account of the special laws mentioned? Corporations may be formed under general laws, but may not be created or amended by special acts, except for municipal purposes. It might be interpreted to relate to special, as well as general laws.

Mr. POND—On reflection, I don't see why an exception is not yet needed; after the word "corporations" insert the words "except municipal." The words "or which may have been heretofore passed" relates to corporations, and is a distinct sentence. It is not carried back by the word "such" to apply to laws except municipal. Therefore I move to add the word "corporations," as proposed by the gentleman from Onondaga [Mr. Alvord], and the words "except municipal."

Mr. OPDYKE—It strikes me if the gentleman from Onondaga [Mr. Alvord] would accept this modification it would cover the whole ground. It seems to me if after the word "passed" we insert the words "in pursuance of the Constitution of 1846," we will cover all the objections that have been urged.

Mr. LANDON—It seems to me these amendments are utterly unnecessary. As I understand this provision it does not seem to me that any court can misconstrue it.

Mr. BALLARD—The committee will have a regard to the subject-matter of this amendment. It is in regard to corporations. Now, no court and no legal mind will apply this language to any other subject than corporations. It seems to me that the section would read, "All laws passed pursuant to this section, or which may have been heretofore passed in pursuance of the present Constitution." The first part of it says, "pursuant to this section." The section relates to the new Constitution. The reading, I suggest, disposes of the matter. It includes all laws passed pursuant to this section—that is, passed pursuant to the present new Constitution; and laws which may have been heretofore passed pursuant to the present Constitution. I would suggest that to the gentleman from Saratoga [Mr. Pond] and the gentleman from Onondaga [Mr. Alvord].

Mr. EVARTS—I beg to say, if the committee will indulge me for a moment, that all the good objects desired are sufficiently secured by the first clause of this section, which would permit, I think, the entire abrogation of the last clause of the section. Can any one doubt a general law of this State passed by this Legislature for the formation of corporations, as on any other topic of general legislation, is subject to amendment and repeal? If corporations that may have come into existence under the general law are protected by the principles of our own Constitution or by the Constitution of the United States

from falling with the amendment or the repeal of the general corporation act, this last sentence of this clause will not have that effect, because this merely provides that the *laws themselves* may be altered from time to time or repealed. If there be an immunity from the operations of the changes of the law upon corporations that have come into existence under the law, this clause does not insure repeal of those corporations. I imagine therefore, when we have determined how corporations may be formed, and how they may not be formed, when we have given no power whatever to form them except under the general legislation of the State, that it is entirely superfluous as regards any good effect or to avoid injurious constructions to provide that these laws may be altered. All laws passed by the Legislature may be altered. And the mere positive power of continually making new laws, implies that old ones may be altered. There is not the least implication in the language of the first sentence of this clause that the Legislature, when they have passed one general incorporation act, cannot pass another. I think, therefore, we shall get rid of all these difficulties of style and expression and meaning of this second clause by striking it out altogether. But if it is to be maintained at all, for any purpose, why would not the simple provision following the first clause, "all such laws may be altered from time to time or repealed," be sufficient.

Mr. KERNAN—With great deference, I beg leave to differ from the view put forth by the gentleman from New York [Mr. Evarts]. I understand him to say that all general laws for the formation of corporations may be repealed or amended, although there is no provision in the Constitution reserving that right, and although it is not reserved in the act itself. I remember a case where that question arose, and it was held differently by the United States courts. In Ohio some years ago, there was a general law passed authorizing all parties who complied with certain conditions to form banking corporations, and by paying certain sums they had certain immunities from taxation. A bank was formed under that general law. Subsequently, in forming a new Constitution for Ohio, it was declared expressly that these banks should be taxed different from what they would be by the general law under which they had been incorporated. My recollection is (and I cannot be mistaken), that in the case of *Knoop v. The State Bank of Ohio*, the United States Court held that a corporation formed under the general law, was a contract which could neither be changed by the State of Ohio nor by the people in forming a new Constitution.

The question was put on the amendment of Mr. Pond to the amendment of Mr. Alvord, and it was declared lost.

The question recurred on the amendment of Mr. Andrews.

Mr. BECKWITH—I ask that the question be divided.

The question was put on the first part of the amendment, and it was declared lost.

The CHAIRMAN then put the question on the second part of the amendment, and it was declared lost.

Mr. SEAVER—I move to amend, by striking out, in line four, the word "section," and insert in the place thereof the word "article."

The question was put on the amendment of Mr. Seaver, and it was declared lost.

Mr. McDONALD—I offer the following amendment:

The SECRETARY proceeded to read the amendment, as follows:

"But such alteration must be such that the portion remaining effective shall be general in its operation."

Mr. McDONALD—After inserting a special provision by which we can alter or amend, I see a mode in which, by passing a general law and then making a special exception under that law, you can, by a double action, make a special law. I do not know that it would be probable; but in order to guard against it I have offered this amendment. It requires if any alteration be made it shall be so made that the law remaining shall still be general in its alteration.

The question was put on the amendment of Mr. McDonald, and it was declared lost.

Mr. BURRILL—I move to strike out the words in the second and third lines, "except for municipal purposes," and add at the end of the section, "This section shall not apply to municipal corporations."

Mr. BURRILL—I suppose that it was understood that this section did not and was not intended to apply to corporations for municipal purposes. It was stated by the chairman that the committee had under consideration no corporations other than municipal, and I also understood from some gentleman who moved an amendment that it was conceded that this section did not apply to corporations merely for municipal purposes. The use of these words, "except for municipal purposes," merely confuse and conceal an attempt, and it might by a strained construction be regarded as conferring the right upon the Legislature to do certain things which it evidently was not the province of this Convention to authorize them to do. Supposing, therefore, that the whole subject of municipal corporations for municipal purposes will be a subject for another committee, referred to by the gentleman from Onondaga [Mr. Alvord] for the purpose of relieving this section from all confusion, I merely ask that the words, "except for municipal purposes," be stricken out, for the purpose of making it clear beyond any doubt. So as to leave no question in regard to it, I wish to add at the end "this section shall not apply to corporations for municipal purposes." This, it seems to me, will be in accordance with the intention of the committee. It will carry out the purposes of that committee, will be confining the subject to matters within their province, prejudging no one, and leaving the whole question to be disposed of on the coming in of the report of the committee having that subject in charge.

Mr. RUMSEY—I hope this amendment will not be adopted, and for this reason: if it is adopted, if I understand the effect of it, it will be to take from the Legislature all power whatever, except merely and nakedly for the purpose of creating the charter of a city or a village, and whatever matters may arise to be carried into effect by legisla-

tive action, further than the mere incorporation of a city or a village, will be beyond the power of the Legislature. That can be the only effect of it; and if we intend to leave municipal corporations and those who may desire corporations for municipal purposes, other than the mere incorporations of cities and villages under the control of the Legislature, we had better not adopt this proposition. If we intend to let all things else pass away from the Legislature, except as I have said, the simple power to incorporate a city or a village, without any power over what is carried on within that village, we had better adopt it.

Mr. EVARTS—I hope the amendment of my colleague from the city of New York [Mr. Burrill], will prevail. Everybody in this Convention understands that neither has this committee been occupied, nor is this article concerned with the subject of municipal corporations; and we wish at once to strip ourselves from the embarrassments of phraseology which carry implications in respect to municipal corporations, but simply declaring that this section does not apply to municipal corporations, with the simple, and distinctive, and intelligent declaration of what we all understand. But I suggest to my friend that, instead of the word "section," he should say "this article shall not apply to municipal corporations."

Mr. BURRILL—I have no objection. I accept the amendment.

Mr. LANDON—The object would be more easily obtained by striking out the words which the gentleman from New York [Mr. Burrill] has moved to strike out, and again, alter the word "corporations," in the first line, the words "other than municipal."

Mr. EVARTS—That leaves the same implication, that municipal corporations cannot be formed under general laws.

The question was put on the amendment of Mr. Burrill and it was declared adopted, on a division, by a vote of 65 to 24.

Mr. KRUM—I offer the following amendment to be added to the end of section one:

"The Legislature may amend the charter of any corporation, but only within the provisions and in view of the general law under which the corporation was formed."

The question was put on the amendment of Mr. Krum, and it was declared lost.

Mr. SCHOONMAKER—I move to strike out the third, fourth and fifth lines, after the word "proposes."

The question was put on the amendment of Mr. Schoonmaker, and it was declared lost.

Mr. A. J. PARKER—If there is no further amendment I wish to offer one, to be placed at the end of the first section. It is as follows:

"No consolidation of railroad corporations shall be authorized by the Legislature when the aggregate capital shall exceed fifteen millions of dollars."

I offer this amendment because I think this is a subject in regard to which the Legislature should be restrained by the action of this Convention. It is well known that most of the scandal that has hovered about the Legislature has been owing to the applications of the railroad corpora-

tions for special legislation; and I wish to deprive the Legislature of the power of consolidating existing railroad corporations where the aggregate capital shall exceed fifteen millions of dollars. I believe that as the railroads are now, they are sufficiently powerful and sufficiently dangerous to the virtue of the members of the Legislature; and if they may be permitted to go to the Legislature and unite some of these great corporations now existing in this State, making in the aggregate an immense capital, and an overshadowing power, why, sir, the State government itself would hardly stand up against its influence. If this evil is to be met, if this danger is to be averted, it must be done here. It must be done by prohibition placed in the fundamental law of the State; because if that is not done, when the proper time comes, the same influences, impure as they may be, that have succeeded heretofore in controlling the action of the Legislature will do so again. There may be no limit to the extent to which they may be carried. Is not the power of any one of these corporations sufficiently great at this time in the experience and observation of all of us? Shall we allow them to join together and double or quadruple their power to control legislation, and to gain advantages which no one can withstand, there being no longer the competition between them which might benefit the public? I offer this amendment, believing that this is the proper place for it when we are legislating in regard to corporations. And I may say here that a resolution of inquiry was introduced by me early in the history of this Convention, and referred to a committee. That committee has not yet reported upon it, and I am told the reason they have not reported is that they thought it belonged to the Committee on Corporations, and therefore they have not acted. As we are now considering the report of the Committee on Corporations, it is, I suppose, the proper time to have the judgment of this Convention upon it.

Mr. OPDYKE—I hope the amendment of the gentleman from Albany [Mr. A. J. Parker] will be adopted. It seems to me that it is required for the future security of the people of this State. We have only to look at the history of our sister State of New Jersey, which has been tied hand and foot for a quarter of a century, absolutely ruled by a gigantic railroad monopoly, and I think I may say disgraced, inasmuch as she has been sneeringly called by other portions of the country "The State of Camden and Amboy." Do not let us run the hazard of being subjected to like tyranny and like disgrace.

Mr. J. BROOKS—If this subject had been discussed as it seems to me it ought to be I might enter upon the discussion of it at some length; for it seems to me that the introduction of railroad topics, or railroad legislation, or railroad excitement into the Constitution of this State is not a wise adoption for a fundamental law of a State. I object, therefore, to this amendment upon that ground and upon that alone; and it seems to me that that argument should be sufficient—that a great State like this, with a great commercial capital, struggling for the maintenance of its metropolitan character and for the control of

the trade not only of this but of all other parts of the country, should not bind itself in the fundamental Constitution of this State irrevocably at least for twenty years to any such procrustean proposition as that of the gentleman from Albany [Mr. A. J. Parker]. I might rest content with these remarks, and it seems to me that they ought to be satisfactory, and I wish I could rest content without any further remarks; but the remarks of the gentleman from New York on the other side of the house [Mr. Opdyke] seems to call for some more general discussion of these railroad topics. From the very law of trade, from the nature of things, from the organization of our State government, the consolidation of capital in the form of railroads is becoming indispensably necessary for the protection and security of trade, but more especially for the concentration and security of trade in the State of New York. The great struggle which the State of New York now has for the maintenance of its trade is with the Baltimore and Ohio railroad, struggling to obtain the trade of the West, and is also with the Central railroad of Pennsylvania to secure to Philadelphia the trade which naturally runs to New York; so that we have now at least three, if not four roads—I might say five—including the Central railroad of New Jersey, running through Pennsylvania—struggling with the Erie railroad, and with the New York Central and the New York and Harlem, and Hudson River railroad—all these cities Baltimore, Philadelphia, powerfully struggling to concentrate with their capital the great trade of the west, a trade only to be concentrated by the use of railroad capital in powerful combinations, not only reaching throughout our own State but reaching through the States of Indiana, Illinois, Ohio, Iowa, Michigan and even Nebraska, struggling for that great western trade soon to culminate in the Pacific railroad, when completed from Omaha to San Francisco, and we hear now a proposition to commit ourselves irrevocably, for twenty years, against these cities of Baltimore and Philadelphia, so that it is not possible for us to change that law, giving these rival cities of Baltimore and Philadelphia, the power to concentrate their capital; so that, whatever may be our future, it will not be in our power to change it by any acts of legislation. These are fair topics for the Legislature to decide, and it will be as capable hereafter to take care of the great commerce of our State, far better, as our mighty commerce becomes developed; for here now, in this year, in the great progress of events which is likely to arise throughout the country ten or twenty years hence, it seems to me that nothing would be more detrimental to the State of New York, and nothing more detrimental to the city which I have the honor in part to represent, than any irrevocable, irrepealable legislation of this sort, to be fixed in the Constitution of the State.

Mr. DUGANNE—I heartily concur in the amendment offered by the gentleman from Albany [Mr. A. J. Parker]. I conceive it, sir, to be one of those propositions which involve a principle, as well as a wise prevision of the future. It has been popularly reported that it was said by a former president of a great railroad of this State,

when called upon to give his support to the election of a member of the Legislature, that it was cheaper to buy the legislators after they were elected than to spend any money in electing them. Now, sir, I do not believe that such flippant innuendoes regarding the Legislature usually amount to much; but this illustration shows what the temper and the feeling of these corporations may be, and what they may be tempted to do in order to carry through legislative measures for the consolidation of their interests. I think I can see very plainly, Mr. Chairman, that a great railroad corporation in this State might elect its own delegations, its own representatives, and send them to the Legislature of this State, and maintain them there. More especially under the operation of the system of county delegations to the Assembly, agreed upon by this Convention, the railroad consolidation might send their representatives in batches to overrule the legislation of this State. For this reason, if for no other, I conceive the amendment to be one of the wisest that we can incorporate into our Constitution, in order to guard against probable dangers; for what is possible in a republic may be probable.

Mr. LANDON—I am opposed to this amendment. We have already in existence in this State large monopolies, which resulted from consolidation; we may need more in the future, in order to compete with those which already exist, and it may be that, by force of this amendment, those which exist may be perpetuated, and those which may be necessary to compete with them cannot be created. The trade of the West, sir, may not always reach the city of New York by means of the Erie canal, the New York Central, or the Erie railroad. It may pass further east, along the lakes, then by the way of the Midland railroad, or by the way of the railroad from Ogdensburg to Schenectady, thence by new routes competing with those existing to New York, or by means of some other routes hereafter to be constructed. Competition is always desirable to prevent excessive charges. It may be necessary to make use of more than fifteen millions of capital in order to concentrate these routes, which may be necessary to a healthy competition. As we cannot foresee the wants of the future, it is unwise to deny them now. I think there is danger in the proposition, and therefore I am opposed to it.

Mr. SEYMOUR—I am as desirous as any man in this Convention can be, to free our legislation from all improper influences, and especially from the dangerous influences which are attributed to large corporations. But, sir, when I look at the proposition of the gentleman from Albany [Mr. A. J. Parker], I think its effect will be to impose restrictions upon the enterprise and the trade of the State, which, in the future, may be very dangerous to its interests. It limits the power to consolidate one railroad with another to cases where the capital of the railroads to be consolidated is each not greater than the amount of fifteen millions of dollars. If the members of this Convention will but look at the capital of those railroads now doing the business done by railroads in this State, they will see that this is a limit very far short of what it ought to be for the purpose of competing with the rival

interests by which we are surrounded. Sir, there is already existing in the States around us leading them to strive to take hold and wield for their own interests the great trade of the Northwest by railroad communication. We have our canal, with that, if it is kept in proper order, if it is enlarged to meet the desires and wants of an enlarged commerce, we shall find no competitor; but in our railroad system we shall meet with competition both on the North and on the South. We do now. The effort is making in the British provinces, by means of railroad communication, to take a large portion of the trade from the Northwest which now finds its way here through the heart of this State to its great commercial emporium. This effort is being made, as has been said by the gentleman from New York [Mr. J. Brooks], both by way of the Baltimore and Ohio and by the Pennsylvania Central railroads. I doubt very much whether this Convention, in view of the efforts making from year to year to divert this great trade from us, will ever consent to limit and fetter the capital of this State so that it cannot be concentrated and wielded by the patriotism and energy of its business men for the purpose of maintaining the commercial supremacy of this State. Fifteen millions! Why, it is but about half the capital of the New York Central railroad, which reaches from the lakes to the Hudson river. What is the capital of the Hudson River railroad? I believe that, counting the debt incurred in creating it, which ought to be counted as capital, it amounts to more than ten millions. The cost of the New York and Erie railroad would exceed far the limit which the gentleman from Albany has prescribed. Who shall say what the improvements of the future shall be; and where is the man on this floor who is willing to tie up the future legislation of the State of New York, with all her wealth and enterprise, with all the honor she has achieved in internal improvements and make her shrink from this contest for commercial supremacy? Sir, I am willing to trust to the patriotism, wisdom and intelligence of future legislators to maintain the honor of New York, even if it should be necessary to consolidate to the amount of one hundred millions of capital; and I shall vote against this amendment.

Mr. ALVORD—I am very much mistaken in my view of the amendment of the gentleman from Albany [Mr. A. J. Parker], if the view of at least three of those who have spoken against it, is correct. I will ask the gentleman from Albany to correct me if I make a mistake in my understanding of his proposition. He does not propose as I understand it, to limit the future capital of any single railroad corporation to fifteen millions.

Mr. A. J. PARKER—Certainly not.

Mr. ALVORD—He merely desires to forbid the combination of capital by the joining together of railroads that now or may hereafter exist. There is no difficulty whatever in the way of the proposition. If Reusselcar, or Schenectady or New York are without an amount of money sufficient to lay a rail from one end of this State to the other may not men be got together in a corporation formed to do [it]. A gentleman at my right

asks me what the difference is. It is this; as the matter now stands you permit the present existing roads of this State, coming from the lakes to the Hudson river and down it, to be consolidated, and by the force of their consolidated capital they control the money market and forbid the formation of rival lines. I trust in God it will never happen in this State, that they will consolidate in the way of any improvement, by thus barring out rival interests. That is the way they will (if permitted) act—holding in their own hands the key of the commerce of this country, and turning into their own coffers the gold which should be distributed among the people. That is the reason I am in favor of the proposition of the gentleman from Albany [Mr. A. J. Parker]. We have had in the history of the Union, and in the different States of this Union, we have seen written as plainly as if marked with a pen of iron upon marble, what has been the result of the consolidation of capital upon the great interests of the people of this country. Where is New Jersey to-day, nothing more than the tool and machine of railroad corporations. Where is Pennsylvania to-day, with her untold millions of wealth within the bowels of the earth, under her mistaken policy—selling her canals which were the jewels of the State, to the railroad corporation—the railroads aggregating to themselves both canals, railroads and mines? She is bound hand and foot, and is a mere hewer of wood and drawer of water to the railroad corporations of Pennsylvania. Look at her halls of legislation; look at the acts passed by her last Legislature, and you will find that, while one man stands out on the floor in favor of the rights of the people, the others are silent until the vote comes, and then the check-string of the railroad is pulled, and they all vote according to the direction of their master. Now, sir, in this State of New York, while I would open a broad field for enterprise, while I would give every enterprise that deserves it the benefit of the accumulation of capital necessary for the purpose of carrying commerce throughout the State, I would so guard it that there could not produce that concentration and consolidation of property, which, from time to time, as these monopolies should grow up, would put it in their power to take into their own hands the entire destiny of the people of the State. I tell you, sir, that, in my humble opinion, if there is not some stop put to it—and here, as the gentleman from Albany [Mr. A. J. Parker], says, is the place to put that stop—there will come a day when, however dear the canals of the State may be to the people, and however much they may desire that they should continue, in the future, to be as great a blessing as they have been in the past—there will come a day, when, through the means and operation of money alone, and not from the necessities or the desires of commerce, the iron hand of the railroads will be laid upon them, and they will be turned into means of wealth to them, at the great cost and expense of enhanced transportation to the people of the State. I trust, therefore, sir, that now, we have the opportunity, now we have the power in our hands, we will impress upon our Constitution our disapprobation of any such possible use of money

for the purpose of taking away the rights and the liberties of the people.

Mr. SCHELL—I hope, sir, the amendment will not prevail. The remarks which have been made by the gentleman from Onondaga [Mr. Alvord], it seems to me, are not convincing in favor of the proposition. I shall commence at the point at which he ends. He remarks that in a short time the iron hand will be laid upon the canals. Does he not know, sir, that the railroads cheapening transportation, have been the means of bringing the products of the far West to our State—that the State of New York has derived great advantage from it, and that from year to year that transportation has been cheapened? And cannot it be said, sir, that the canals are the competitors of the railroads in transportation? On the contrary, sir, the canals are the competing power of the railroads, and the railroads competing with each other will continue to restrain—

Mr. DUGANNE—Will the gentleman allow me to ask him a question? Would not the consolidation of all the railroads tend to make such a power as would monopolize the carrying trade of these canals?

Mr. SCHELL—It is impossible to conceive that the railroads of the State of New York, and those passing through New Jersey, Pennsylvania, Ohio, and Maryland, as was said by the gentleman from New York [Mr. J. Brooks] can ever be brought together so as to destroy the canals of this State. The competition that exists between these several railroads requires that there should be certain privileges and certain protection given to railroads in this State, so that they shall not be destroyed by the competing lines of other States. And, sir, the great objection to the proposition made by the gentleman from Albany [Mr. A. J. Parker] is, that it puts the railroads of our State in the control of railroads in other States. It is by the power of organization that freights may be reduced, and produce may be transported at the lowest rates. Why, sir, look at the experience we had last winter in the inconvenience of having the connection of the railroad from Buffalo to New York severed for one day. The whole State was put to great inconvenience by reason of its being so severed; and the only remedy for that would be consolidation. If the roads from Buffalo to New York should make arrangements to consolidate, it would enable produce to be transported more reasonably and therefore advance the commercial interests of the State. But, sir, as has been remarked, there are other—

Mr. HARDENBURGH—Who severed the connection of those roads?

Mr. SCHELL—It was by the operation of the railroad companies—by the disagreement in running the roads. If they had been consolidated, there would have been no difficulty. But, as I was about to remark, there are other interests. The great northern trade may be brought to New York, and arrangements are in progress looking to that result. It may be necessary for the protection that consolidation of the roads for that purpose should be had. The same action may also be necessary with the eastern roads terminating in New York, in order to insure freight and passengers from the East to New York. It seems to

me that the whole interests of our State would be better served by allowing the Legislature to act upon this subject, rather than by adopting the proposition of the gentleman from Albany [Mr. A. J. Parker]. Fifteen millions, as has been observed, is a small amount of capital to apply to internal communication; and why should New York put its hand upon these efforts which are intended to secure communication between the several parts of this State and with other States now competing with this State for the great trade of the West and prevent their accomplishment.

Mr. BALLARD—I am heartily in favor of this amendment of the gentleman from Albany [Mr. A. J. Parker]. Consolidation is a term in the statutory enactments; but, Mr. Chairman, the interests of commerce, the interests of trade, the desire of gain are continually tending to commercial arrangement between these different railways; and I think it may be safely intrusted to the enterprise, and I might say patriotism, and the hope of gain on the part of these companies running through this State, to protect us against these rival routes which have been spoken of, running through Pennsylvania and Maryland. I think, sir, that the amendment of the gentleman from Albany [Mr. A. J. Parker] would be a wise provision for this Convention to adopt; so that we may keep from the statute book this consolidation, having the power of the legal enactment to keep up with the results which would flow from it, leaving it—so far as the interests of the State are concerned—so far as our hold on the vast commerce of the West is concerned—to the interest of these different routes to combine by contract instead of statutory consolidation.

Mr. T. W. DWIGHT—The gentleman from New York [Mr. J. Brooks], with other gentlemen who have spoken on this subject in opposition to the amendment of the gentleman from Albany [Mr. A. J. Parker], has based his opposition on the ground of the interests of trade. I think, sir, that the subject, in the words of another, rises to a higher dignity and has its roots in a deeper policy. While I yield to no one in my desire that the trade of our great emporium should not be diminished, and while I rejoice when I see it increase, I also desire that nothing should be done in any manner to interfere with the prosperity of the entire State. Why, sir, this question, it seems to me sometimes, becomes a question of sovereignty. It is a question whether the people shall succumb to corporations; whether they shall exercise their sovereign power in the way in which a great people ought to exercise it, or whether this sovereign power should substantially depart from them and should yield to the action of an irresponsible corporation. Now, sir, we know that the tendency of railroad corporations, above all others, is to form combinations. When a great and organizing mind gets control of one of these institutions there is apt to be a tendency on his part to unite the action of all from a desire that there should be no interruption in the continuity of travel. He desires almost from his very nature to see that these great associations should form one line and be under the management of one mind, one strong will controlling its action. I do not blame such men. They naturally tend in that

direction. But on the other hand it ought to be asked whether it is for the advantage of the State to have a powerful interest within it representing so great an organization, extending perhaps to other States, like, for example, the Chicago and Northwestern Railroad Company. We all know how, from a very small institution, it has become one of the most gigantic corporations in the land. Does it stop at State lines? Does it confine itself to the State of Wisconsin, where it was originally constituted? No, sir; it has extended, or seeks so to extend, itself as to engross the trade of several States. It has merged powerful corporations into itself as a single institution; and the men who manage it may have the ambition to make it the great and controlling line of the country. Whenever that takes place, the good of the people will necessarily be overlooked. The interests of the corporation will be everything, and the interests of the people will be of but little account. Whenever great corporations become thus united under one organizing hand, and controlled by one brain, the question will certainly be presented whether the local interests of the State shall be protected or the great corporation shall be fostered, and then, of course, the interests of the State will naturally yield to the idea which has taken hold of the organizing mind. The main ground of all the objections which have been urged in regard to corruption of the Legislature, it seems to me, is to be found in the tendency of these corporate interests to grasp at the substance of sovereignty—their tendency to look at the interests of their line, of the trade which comes over their line—rather than at the interests of the State. When the advantage of the State and its own supposed interests come in collision, and resistance is made in behalf of the State, the corporate organization aims to beat down and overcome the resistance. It is ever watchful and will not yield until it is successful. It will not be scrupulous in the means which it employs to accomplish its designs. The State may still retain the form of sovereignty but its power is wielded by a body extraneous to itself. While there may be danger of this result in the combination of several corporations constituting a continuous line, that danger is largely increased when a single board of directors controls them all, dominated, as it is almost sure to be, by a single master mind. The occasion, the opportunity will supply the man. Thus the strong man of the present moment will surely have his successor, inspired by the corporate spirit, and inheriting the aims and methods of his predecessor. For these and other reasons I am in favor of the amendment of the gentleman from Albany [Mr. A. J. Parker]. Whether the precise limitation of fifteen millions, which he has proposed, is best I am not prepared to say, but I favor the principle of the amendment, and hope that it will be adopted.

Mr. A. J. PARKER—Opposition has been made to this amendment upon the ground that it might interfere with the city of New York. Now, that such an objection is entirely groundless I have no doubt whatever. Certain it is that the city of New York has grown up to be the great emporium of the commerce of this portion of the world without the consolidations which I am

seeking to prevent. She has not needed them in the past to give her the advantage, commercially, over every part of the State, and I do not believe that she can need them in the future. But is it possible that gentlemen here discussing a question of this kind, a question, I think of principle and a question perhaps of personal liberty; a question, to a certain extent of legislative purity; is it possible that they are to decide it, and give all up upon the mere idea of money? Is money sufficient compensation for the yielding up by the people of their control of their own institutions? I trust not. I trust that we shall not be so dazzled by the jewels that glitter in the crown as to tempt us willingly to submit to it. I doubt very much if the gentlemen of this Convention, placed here by the people to take a firm stand in restricting the Legislature from innovations upon their rights, will be willing to decide it upon a mere question like that. But I insist that no railroad consolidation can interfere at all with the progress or the wealth of the city of New York. I ask, are there not personal rights and personal interests of every individual citizen of this State involved? Give to the Legislature supreme power over the subject and what shall prevent its consolidating the Central, the Hudson River, and the Harlem, and if they have influence to bring about that, they will, of course, have the power to fix the prices of freight and the fare of passengers at precisely what they desire. The people that travel over those roads daily, and make up by their contributions the wealth of that great city; these are the men that are interested in this great question; these are the men that are to pay double tribute to these corporations after they shall have been consolidated. It is a question of personal right and personal liberty—a question in which, in my judgment, every man in this State is deeply interested, and one that I trust they will look to. My friend from New York, who spoke first against this amendment [Mr. J. Brooks], said he hoped that the subject of railroads would not be introduced here—that there should be no excitement. But pray why exclude the subject of railroads, if that be a proper subject for legislative restriction? I admit that we should meet it coolly, as does my friend from New York; but we should meet it firmly and boldly. We shall justly be held responsible in the future if we neglect to say to this Legislature, aye, and to say to these corporations, "Thus far shalt thou go and no farther."

Mr. RATHBUN—It is said that all power resides in the people, and a favorite topic among the politicians is that they are sovereign, and that all power emanates from them; but I have thought at times, Mr. Chairman, that there were some powers that were not to be overlooked, in determining questions which are presented from time to time for examination. It was said in olden times that education was power; and we can very readily see, when we compare the power of the uneducated with that of the educated, that there is a distinction, in regard to the question of power, between the well educated and those that are uneducated. But, sir, there is another element of power which I have heard of, and which I have sometimes been afraid of, and that is money; and if there is any power existing in the State of New

York, or among any people in the United States, against the influence of which the people require to be guarded and protected, it is money. Now, sir, the source of legislative corruption begins in money, and it ends in money. Without that nobody would have been telling us about legislative corruption; that is the source of temptation, and it is the source of the wrongs from which the people have suffered, if they have suffered at all at the hands of the Legislature. The more you combine that power, sir, in the hands of a few, the more dangerous you make it to the great body of the people. If you look back, sir, only a few years ago, and endeavor to find out the time when legislative corruption began, so as to be worthy of particular note, I apprehend that the era which may be marked out was about the time of the consolidation of the great route between Albany and Buffalo. That was a most gigantic experiment. That was a day when a rich shower fell into the hats and into the hands of members of the Legislature everywhere—when paid-up railroad stock was put into members' hats that happened to be on the right side, and the poor, innocent man who took it up, without knowing that anything of the kind was to fall in his way, found himself the owner of paid-up stock in the great consolidated railroad from Albany to Buffalo, was ready to ride home a rich man; and from that day to this—whether the reports be true or false I know not—but from that day to this the Legislature have been descending in public estimation, not very gradually, but rather more rapidly, in fact, than is agreeable to the people. Is it not about time for us to pause in this matter and see whether there is anything left that the people can hold fast to in order to regain their rights and restore the purity of the legislative body who make their laws? Now, sir, I am not opposed—nay, sir, I am as much in favor of the prosperity of the people of the State and of the city of New York as anybody in the world, for it is my native land; I never lived in any other. I am proud to be a citizen of this State; I am proud to be able to say that I was born in the State of New York. But, while I desire its prosperity and would make any sacrifice necessary to promote it, I am at the same time unwilling to sacrifice the rights and interests of the people to advance the prosperity of corporations, which need not and in fact have no right to demand a consolidation of an amount of money, under the control of a single head, that can bind the whole body of the people hand and foot. Sir, I am in favor, not of the consolidation of railroads, but of such a combination of railroads as to insure success in the business of railroads running from one point to another necessarily connected in the transportation of passengers and freight. It has been said, sir, that within the last year the people were interrupted in their travel, and their freight delayed upon the road, and arrested in its progress to market. And what was the reason of that interruption? A quarrel between two powerful corporations. And yet, sir, they were all within the power and the reach of the Legislature of the State, if they had the courage to apply the

remedy. I will not say that that power could be successfully used, nor what would be the most efficient way to use it; but it is enough to say that the remedy was not applied. The quarrel was arranged and the business resumed. I submit that we should retain the power to coerce and control these corporations, and to compel them to act, not in spite and malice toward one another, but to act in combination upon the principles on which they were incorporated, and that was for the prosperity and benefit of the people, and not for the coercion and control of the people. In that view of it, sir, we preserve some show of competition among these corporations; but the moment that we permit them to form unlimited consolidations of their railroads, we are at their mercy. We are sufficiently under their influence now; and I do hope and trust that this Convention will do something toward preventing the further advancement over the people of that power which may be used to oppress them. That it will place a limit, not on combinations for the purpose of transacting business, but on consolidation of power to override and oppress the people. I am in favor of that amendment, Mr. Chairman, and I am in favor of all such restrictions; and I trust that all members of this Convention who are free to act, and who are disposed to act in behalf of themselves and the people whom they represent, will give their support to this proposition.

Mr. J. BROOKS—It was far from my intention to enter upon any discussion upon any subject, but a proposition so important as this, not only to the State, but to the city which I in part represent, I felt it my duty to discuss the moment it presented itself here. But, it seems to me, coming to this body from another sphere, that I had almost come into another country, from the regions whence I came. In the last legislative body in which I appeared, I heard of nothing but the purity of the people, the intelligence of the people, the capacity of the people for self-government, and the incorruptibility of the people; but here, I hear of nothing but the frauds about to be perpetrated upon the people, the incapacity of the people for self-government, the ignorance of the people, the susceptibility of the people to the money power, the want of confidence and trust in the Legislature, whom the people create, and the whole tendency of the legislation here, or of the discussion here, is a pronunciamento against all self-government, against the capacity of the people to elect their legislators, or against the corruptibility of any legislator who is sent here to represent the people. I have been educated in a school far different from that—in a reliance upon the people; and though I am often voted down by the people, in due deference to the majesty of the people, I am accustomed to think that I am more likely to be mistaken in my opinion, when I cannot convince the people, than that the great body of the people themselves are likely to be mistaken or corrupt. But here the honorable gentleman from Onondaga [Mr. Alvord] and the gentleman from Cayuga [Mr. Rathbun], who represent agricultural districts, who are supposed to be incorruptible, tell us over and over again in this body, although they or their friends

or associates may hereafter represent those agricultural counties, yet they themselves, when legislators in this State, elected by the farmers of those counties, are not to be trusted against railroad corporations and railroad powers, and those who have the money and control in some degree all the property of railroad interests in this country. Sir, I know legislators have been corrupt, but few Legislatures, in my judgment, have been so corrupt, as I constantly hear accusations railed against them in the discussions which have taken place since I have been here. Sir, the people must be trusted. If the people cannot be trusted in our Legislatures, or the representatives of the people cannot be trusted, it is time to change the whole form of our government and resort to that government which is over the St. Lawrence—a monarchy—to take care of the people and take care of the Legislatures of the people. The whole theory of our government is that the people and the representatives of the people are to be trusted, and that confidence and trust may be reposed in the people, and, therefore, I resisted from the start this engrafting upon the fundamental law of the State an accusation against the people, that by more than fifteen millions of capital vested in a railroad, legislator after legislator could be bought up. I resisted it as a principle which should not be engrafted upon the Constitution of the State, because it places the Empire State at a disadvantage, not only with rival States in other parts of the Union, but with that great railroad and canal corporation beyond the St. Lawrence, Lake Erie and Lake Ontario, which is struggling to turn the great trade of the West down the St. Lawrence to Montreal and Quebec, going away from New York directly over the sea. I say I see nothing disadvantageous in at least the concentration of one railroad reaching from Buffalo to the city of New York; I see no such terrors to the State as gentlemen picture here and no such alarm. When I look to the Legislature of Maryland I see a far more powerful corporation incorporated in that State, reaching from Baltimore to Wheeling and beyond the limits of that State; and when I look to the Legislature of Pennsylvania, a Legislature quite as wise as ours in the administration of its pecuniary affairs, I see no such terrible results as gentlemen predict in the consolidation of one railroad in the State of Pennsylvania. Sir, what was the state of things hitherto in this State before the railroads were consolidated from the city of Albany to the city of Buffalo? Gentlemen entered the cars at Buffalo, received a pass which would carry them to the city of Rochester; they then must go to a railroad office to get another pass through to Auburn or to Syracuse (at that time through tickets did not exist). At Syracuse another line of railroad exists, and there they must obtain another ticket, connecting or not connecting, to the city of Utica; and at the city of Utica they must obtain another ticket to carry them to the city of Schenectady, and from Schenectady another line of railroad exists reaching to the summit of this hill in Albany, so that they were not taken to the river, but dumped out here in the streets to procure their passage to the commercial emporium as might be agreeable to them, or for others to pro-

vide for them. The consolidation of the railroads in this State by the Legislature of this State was one of the greatest and wisest measures which ever a legislative body had adopted. It was a matter of necessity as well as of wisdom, for the control of the trade and the passengers of the West could never have been secured but by that act. And next was the erection of the bridge over the Hudson river and the connection of that line of railroad with the great West. Now, I suppose the object of this proposition is to resist consolidation of the Hudson River and Harlem roads with the Central Railroad; hence the proposition meets its support here upon the floor of the Convention, while it is just as wise now as it was ten or twelve years ago, to consolidate the whole line, over one line, one capital, one government, one board of directors, and one spirit to control the whole line. Sir, there is no more beautiful spectacle to an American—nothing more showing the grandeur of our country—than to see trains of cars passing through here from Omaha, Nebraska, upon the Missouri river, bringing the cattle, produce and luxuries from the West over the rivers, passing them along to the city of New York. It is only by a concentration of this capital, by this unity of action, and by this wisdom—

Mr. RATHBUN—I would ask the gentleman whether the cars do not run now from New York to St. Louis without change?

Mr. J. BROOKS—Only by the co-operation of multitudinous directors, but it is in the power of any one railroad, or one board of directors, to interrupt the communication.

Mr. DUGANNE—I would ask the gentleman whether a law has not been passed in this State providing for the connection, and whether it cannot always be done without consolidation?

Mr. J. BROOKS—Yet, it is in the power of any small railroad corporation, like the railroad from Schenectady to Albany, when it was a separate road, it would be in the power of its board of directors to interrupt the whole communication except by the action of the Legislature of the State, which Legislature this Convention is not disposed to trust with the regulation of its own railroads, while I am contending that the Legislature is to be trusted with the absolute control over these roads, and that the people, in that respect, will have confidence in their legislators. Sir, we must not undertake to engraft upon the Constitution of the State, legislation of this sort. The Constitution of the United States, which is one of the most beautiful instruments that ever was written, is a small instrument, to be read in a few minutes, to be comprehended by almost everybody, the wisest Constitution that ever was written. If we attempt to engraft upon this, our State Constitution, provisions like these, merely legislative provisions, upon the presumption that the people are corrupt, and that the Legislature is corrupt and not to be trusted, we shall be creating a Constitution which it will be difficult for the people even to have time to read from October to November, and which will have within itself so many elements of opposition, it will be very likely to meet with but small success before the people. This is a subject which pro-

foundly interests my own city, and that is my only excuse for the remarks I have made; and I repeat here, before I close, that it is impossible to concentrate the trade of this country through this State upon the great commercial emporium, against British capital which is pouring into Canada, against Pennsylvania, Baltimore and their capital—It is impossible to concentrate, keep and monopolize, as we are keeping, the great growing trade of the West—It is impossible to do it except by allowing capital free and full fair play, without these constitutional restrictions upon it, irrevocable and irreparable at least for twenty years to come.

Mr. CASSIDY—I regret to differ with my distinguished colleague in regard to a matter so important as this. If he had modified his proposition so as to confine it to parallel and necessarily competing roads, it would have had great plausibility, and I have no doubt would have commanded at first view the general assent of this body; but, even in that shape, I think it still objectionable. It is impossible for us, even in a Constitution, to confine the course of capital and to prevent those great combinations which trade demands, and which it is always finally able to enforce. If the law should attempt to-day to prevent the consolidation of lines between the lakes and our great sea-port, a tacit understanding would, as now, combine them together. It would, as it often has, combine competing lines—the Erie railroad with the Central, and those two with the Pennsylvania Central upon a common tariff for freight and passengers, and thus baffle these prohibitions which the Constitution would place against them. We would stand here with a Constitution utterly and emphatically inoperative, and whose prohibition would thus have no force. This great State must accept its destiny. It is not a small State, where fifteen millions of capital is formidable. It would do for Rhode Island or Delaware, to have some limitation of that kind, but it takes five hundred miles of travel to reach from the lakes to our great emporium of commerce. We must have here immense lines with all their extended connections. Our railroads are developing to an extent never before known. We are but at the beginning of this railroad life. We shall have, in years to come, a line from the ocean to the lakes, devoted to carrying the freight of the great West; and therefore we must accept our destiny as a great State, great in extent and holding the control of the commerce of the continent; and we must allow these great capitals to unite and combine. We must not attempt to divide up and hold apart these lines. They have already the power of combination, by open agreement, or by tacit understanding, and our mandate would be wholly inoperative. Let us not write words without force in our Constitution.

Mr. ALVORD—I desire to say a very few words further upon this question. I will ask gentlemen to look upon the present state of things in the State of New York to-day. I think I speak advantageously, and I speak with the knowledge of those within the limits of this Convention who are engaged in the enterprise of which I wish to speak. It is true that now it is but a cloud the size of a man's hand but it is soon to overwhelm in

perfect darkness the entire of this State. This consolidation does not mean a consolidation of a single line of road reaching from the lakes to the river and to the sea. It means the consolidation of the New York and Erie with the New York Central and the Harlem and Hudson holding thus in their own hands the entire keys throughout the length and breadth of this State, and saying to the people, "You cannot have any other means by which you shall reach from the great and growing West to the East of this country." That is the position which the thing occupies to-day; that is the desire of these men who wish to have it left to the Legislature in the future, that they may consolidate their interests, not the consolidation of a single line moving from one point to another, but the consolidation of the entire railroad interests in this State in one great corporation, throwing out its iron hand from the center throughout the extent of it all around upon its borders, holding in its deadly grasp the interests of the people of the State. Sir, the gentleman from New York [Mr. J. Brooks] who addressed the committee undertook to talk about our want of confidence in the people. I have not any want of confidence in the people. I come here, sir, to represent my people—the people of my locality, the people of my county, who, without any regard to political distinction, will stand up to-day, every one of them who have not the trammels of the railroads upon them—and, thank God, they are the small minority—and say, "Well done, thou good and faithful servant" when I go in favor of the proposition of the gentleman from Albany [Mr. A. J. Parker]. This is the way I have confidence in the people. I believe the people of the State of New York demand it at the hands of this Convention that they should place in the organic law, for the people who have got to pass upon this matter and approve or it, that there shall not by any possibility in the future any doubt in regard to this great and grave subject of great moment and importance to the people. Now, sir, it may not seem right under the grave and heavy weight which surrounds this subject, to speak of any inaccuracies of statements made upon this floor on the part of those gentlemen who are opposed to this resolution, but, sir, I believe I have also lived within the State of New York, and within the central portion of the State all my life; I have seen the railroad began and ended; I have seen these disjointed pieces spoken of by the gentleman from New York [Mr. J. Brooks], but I never yet saw, and never was compelled in all my transfer over the line of that railroad to get out of the car at Rochester and buy a new ticket to go to Auburn, or to get out at Auburn and buy a new ticket to go to Syracuse, and so on. I got exactly what you get to-day, although in greater numbers; I got a continuous ticket, and when the Rochester man took my ticket I had a part of it left to go on with. It is true, in the first place, there were separate tickets, but all sold at each office; but afterward continuous tickets. How is it now? I get in at Buffalo and take a ticket to the city of New York; I surrender a portion of it when I get to Albany, and the balance of it carries me through. There is

another thing. The gentleman from New York [Mr. J. Brooks] undertakes to talk about the caprice of these intervening railroads, that they may throw the business entirely out of joint. It is not caprice that governs these men, it is solid interests, their interests forbid that they should throw anything in the way of the transmission rapidly of person and property, and as long as their interests jumps with the convenience of the public—and it must necessarily in this case, the interest will control, and caprice will have nothing whatever to do with it. I will ask the gentleman also to tell me whether the fact is not to-day, that upon the line of the New York and Hudson River road, there does not proceed trains of cars running over the bridge at Albany, coming up on the Central road and through Rochester, spreading out like a fan, and a portion going up the line of the New York Central railroad and crossing the Suspension Bridge and moving up through Canada on the Western railroad and crossing at Detroit, and still the passengers and freight crossing or moving along continuously and without change until they reach Chicago, and even then, going across from Chicago to the Mississippi river, and, crossing that at the different lines from Fulton and other places; also going down the Rock Island road and crossing the river and going into far Iowa, then, taking another route and going down to St. Louis or Omaha. It is because the interests of these roads render it necessary that they should give these facilities of transportation to the people that they are thus kept together for the benefit and convenience of the people. I believe not in consolidation; I believe as the gentleman from Cayuga [Mr. Rathbun] says in combination here. The combination is a combination which will exist so long as the interests of those who are engaged in it, and that, of course, will be as long as the people shower benefits upon them; that combination is a combination that may be changed, so far as regards its operation upon the people, by changing the directors from time to time of the different roads. Consolidation puts it in the hands of one head, one man, and one government, and it becomes an iron, inflexible rule, out of which you cannot go. Now, sir, I ask the gentlemen of this Convention to go back with me a few moments to the State of Pennsylvania; I ask them to look at the history of that State, and impress upon their minds what has been the result of railroad legislation within the limits of the State of Pennsylvania. She had a system of canals permeating almost her entire country, carrying the humble boat of the private individual to his farm, or to his mine, or to his business place, wherever it might be, carrying it at the rates fixed by the State of Pennsylvania, immutable so far as it could be made by legislative enactment. In an evil day and under evil advice, the State of Pennsylvania parted with her interests in those canals, but she impressed upon the contract by means of which she parted from them, that they should be maintained, and that the tolls upon them should never be raised above the tolls of 1856. What are the

facts to-day? Those canals are gradually filling up from one end of the country to the other, and this railroad influence has gone down to her Legislature, and has abrogated so much of the contract in regard to the question of tolls, that to day, against less than one-quarter of the amount of cost to the owners of railroads canals and mines together, it costs the inhabitants of the State of Pennsylvania, outside of the railroad and canal corporations and the inhabitants of the city of New York going down to their mines for the purpose of getting upon their connections and connecting with the canals of the State of New York so as to get coal for the two dollars and fifty cents for the canal toll, one hundred miles when it costs in the State of New York under our toll system twenty cents for the same distance. Now, this is the result of the action of a sister State in this matter, and I trust that while we can, we will shut down the gate, so that it cannot by any possibility be raised in the future, either through the mistaken notions or corrupt advice of the legislators of the State; that we shall do it permanently and at least forever so far as the existence of the Constitution which we are about to frame will permit of the use of that word.

Mr. CORNING—I am induced to make this remark from thirty years' experience in railroad matters. I have come to the conclusion that this amendment is a wise one, and in my judgment ought to be incorporated in the Constitution.

Mr. BELL—It is evident we will not complete this article at this sitting, nor reach a vote on the amendment now pending. I would therefore ask if an amendment is now in order?

The CHAIRMAN—Yes, sir.

Mr. BELL—I offer this amendment, not for the purpose of pressing it now, but that it may be examined in connection with the pending section. I offer it to meet a defect which exists in the present Constitution. It is as follows:

"The capital stock of all corporations organized under the provisions of this section shall be fully paid up in cash, and all such corporations now existing, or that may hereafter be formed, shall be required to make annual statements to some State officer of their assets and liabilities and of their income and expenditures.

Mr. CHESEBRO—I move that the committee do now rise, report progress, and ask leave to sit again.

Mr. BELL—For the purpose of getting a vote at this session, I will withdraw my amendment. I did not intend to override the other amendment.

Mr. CHURCH—It is now two o'clock. I trust this question will not be put to a vote at this time. It is too important, and I submit under the order of this Convention the committee must rise and report progress.

The CHAIRMAN—The Chair thinks the committee must rise, not necessarily to report progress, but that the President may take the chair at two o'clock and adjourn the Convention.

The hour of two o'clock having arrived, the President resumed the chair and declared the Convention adjourned until Saturday morning.

SATURDAY, August 17, 1867.

The Convention met at ten o'clock.

Prayer by Rev. DAVID DYER.

The Journal of yesterday was read by the SECRETARY and approved.

The PRESIDENT—The Chair has received a communication from Mr. Ludington, stating that he is too unwell to attend, and therefore he asks for leave of absence.

No objection being made, leave was granted.

Mr. HUTCHINS—Mr. Van Cott was suddenly taken sick last night, and I ask leave of absence for him.

No objection being made, leave was granted.

Mr. SEYMOUR—I wish to ask leave of absence for my colleague, Mr. Francis, who is necessarily absent until Wednesday morning, on account of sickness in his family.

No objection being made, leave was granted.

Mr. SEYMOUR—I wish to ask leave of absence for Mr. Armstrong, on account of illness, until Tuesday.

No objection being made, leave was granted.

Mr. E. P. BROOKS—I ask leave of absence for Mr. Ballard until Tuesday next.

No objection being made, leave was granted.

Mr. WALES—I ask leave of absence for Mr. Baker, of Montgomery.

No objection being made, leave was granted.

Mr. SILVESTER—I desire to ask leave of absence for Monday next, and, if necessary, until Tuesday at twelve o'clock.

No objection being made, leave was granted.

Mr. DALY—I ask leave of absence until Tuesday morning next.

No objection being made, leave was granted.

Mr. LAREMORE—I ask leave of absence, conditionally, until Wednesday morning. I have a professional engagement which may detain me, but will not avail myself of it if it is not necessary to do so.

No objection being made, leave was granted.

Mr. ALVORD—I am requested by my colleague, Mr. Andrews, to ask leave of absence for him for this session, from the fact that he is subpoenaed as a witness in the case of proving a will.

No objection being made, leave was granted.

Mr. ALVORD—I ask leave of absence for Mr. Corbett for this day's session.

No objection being made, leave was granted.

Mr. SILVESTER—I desire to ask leave of absence for Mr. Stratton, on account of sickness, until Tuesday next.

No objection being made, leave was granted.

Mr. FOWLER—I desire to ask leave of absence for Mr. Case, who is necessarily absent, and will be absent until Friday next.

No objection being made, leave was granted.

Mr. MERWIN presented the petition of S. G. Read and eighteen others for a constitutional provision for the protection of fisheries in the international waters of the State.

Which was referred to the standing Committee on the Preamble and Bill of Rights.

Mr. BELL presented the petition of Captain S. Middleton and others, citizens of Brownville, Jefferson county, on the same subject.

Which took a like reference.

Mr. SEAVER, from the Committee on Printing, submitted the following report:

Your committee, to whom was referred the following resolution:

Resolved, That the sergeant-at-arms deposit in the box of each member in the post-office of this Convention, three copies of all documents and reports printed by this Convention.

Would respectfully report that they have had the subject under consideration, and find that the adoption of this resolution will involve the printing of an extra number of documents and reports, which, your committee being admonished by the former action of the Convention, do not feel at liberty to recommend, and therefore submit the question for the consideration of the Convention, with the following explanation:

Rule 42 provides for the printing of the usual number (800) of all documents and reports of the Convention. Rules 43, 44 and 45, provide for the disposition of these documents, reports, etc., as follows:

Mr. FOLGER—I move that it lie on the table for the present.

The question was put on the motion of Mr. Folger, and it was declared carried.

Mr. CHAMPLAIN—I offer a resolution, and ask that it lie over under the rule.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That the Committee on the Preamble and Bill of Rights, be instructed to report as a part of the same, the eleventh section of article one of the existing Constitution, with the following amendment as a part of the said eleventh section:

"No part of the lands included within the limits and jurisdiction of the State shall be ceded to any corporation created by the Federal Government, nor to the Federal Government, except for mail, military and naval purposes exclusively, and in such cases only upon the express condition that the right is reserved to execute civil and criminal process issued under State authority, on such ceded territory, and also the writ of *habeas corpus* in behalf of any person therein imprisoned or restrained in liability.

Which was referred to the Committee on the Preamble and Bill of Rights.

Mr. S. TOWNSEND—I call up the resolution offered by me yesterday.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That the Comptroller be requested to report to this Convention:

1. The value, *per capita*, of all the real estate in the several counties of this State, as exhibited by the last official assessment and census.

2. The value, *per capita*, of all the personal estate.

3. The value, *per capita*, of the real estate represented by incorporated or associated capital.

4. The value, *per capita*, of the personal estate represented by incorporated or associated capital.

Mr. S. TOWNSEND—Mr. President, I had supposed that a mere resolution of inquiry of this nature would go through without any opposition. I have seen the Comptroller, and he agreed to furnish the information required, and I think it

will be of great use to the Convention in the consideration of the report of the Committee on the Finances of the State. I hope this resolution will pass.

Mr. FOLGER—I would like the gentleman to state what he means by the amount of real estate *per capita*.

Mr. S. TOWNSEND—Suppose the corporations of a county held one million real estate, and the population of a county was one hundred thousand, the answer is obvious.

Mr. ALVORD—I would like to inquire of the gentleman what he means by real estate, *per capita*, for incorporated companies.

Mr. S. TOWNSEND—Incorporated companies hold real estate. I mean by *per capita* the population of the county.

Mr. FLAGLER—I shall vote against the resolution, for I cannot see that it would be of any practical value to the Convention. I move that it lie on the table.

Mr. S. TOWNSEND—I hope the gentleman will withdraw his motion for a moment.

Mr. FLAGLER—I will do so.

Mr. S. TOWNSEND—Perhaps it would be proper to explain a little further. I may be wrong in reference to the result of the inquiry. I had hoped, Mr. Chairman, that the resolution would need no further explanation than it contained on its face, but I will now say that some years since, from a slight examination of the question, I derived the impression that the valuation of real property and real estate, personal, real or incorporate, ran in closer parallels in the several counties of the State than was generally supposed. It is to elicit more light on this fact, through the experts of the Comptroller's office (and I think I am justified in here saying that it was with his approval this resolution was framed), rather than we should individually be compelled to unravel the facts from the numerous documents now on our tables. This table, sir, would prove of great use to the Convention when they have under consideration the three reports from our one Finance Committee in relation to the State debt, taxation, etc.—a taxation that for State purposes imposed twelve millions of dollars on the several counties, or an equivalent of three dollars *per capita* on the people of the entire State. Again, sir, I hope under the light and information that such table would furnish that the Convention would learn that when there are apparent discrepancies in the rate of property and population in any of the counties, these discrepancies had arisen from an erroneous basis of assessment in certain counties as compared to others, notwithstanding the existence of a board of State assessors, who have, in my opinion, failed in a great measure to serve the object of their organization, and thus render necessary some constitutional action to secure the equitable distribution of the State taxation upon the several counties, leaving the details of the local taxation to the county officers, under the direction of general laws. That is all I have to say.

Mr. FLAGLER—I have been advised that this resolution is intended or has reference to the distribution of the State which was introduced to the Convention some time ago. I shall with-

draw my motion, but will vote against the resolution.

Mr. SEAVER—I hope this resolution will prevail. It is a matter of considerable importance. It is the only question on which I am pledged to my constituents, that I would endeavor to secure a provision in the Constitution for the equal distribution of the property of the State every Saturday night. I trust it will prevail, for I think that is the only object that can be effected by it.

The question was put on the resolution of Mr. S. Townsend, and it was declared carried, on a division, by a vote of 40 to 38.

Mr. FOLGER—I move to reconsider the vote on this resolution.

SEVERAL DELEGATES—There is no quorum voting.

THE PRESIDENT—The Chair is aware of the fact that there is no quorum voting, and the resolution therefore lies on the table.

Mr. KINNEY—In view of the fact that on Friday evening next there will be no session of the Convention in this hall, I offer the following resolution, and would like to have it considered at this time.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That the use of this hall be granted to the Hon. C. P. Johnson, of Brooklyn, on Friday evening next, to deliver a free lecture on the Philosophy of Government.

Mr. ALVORD—I am opposed to the passage of the resolution, not but I would be willing to grant to the Hon. C. P. Johnson the right to use this room when we might not want it, if we have the right to do so, but I doubt whether this Convention has any such power over this room as to be authorized to grant its use to any one except for the purpose of coming before a committee of this Convention, in order to enlighten them upon matters which it may be necessary for us to act upon in the future, and it is for that reason that I am opposed to this resolution.

Mr. KINNEY—I think we have established the precedent beyond a doubt that we can grant the use of this hall for such purposes. On three occasions to my knowledge it has been used for purposes no more legitimately connected with the business of this Convention than the one now under consideration, and on one occasion when we desired to use it ourselves. If the hall is not to be used by ourselves I cannot see any objection to granting the use of it.

Mr. ALVORD—I would say to the gentleman from Tioga [Mr. Kinney] that in these three cases which he pitches upon, it was a matter of discussion before a standing committee of this Convention in each case. It was for the purpose of enlightening us in regard to matters which were before us, or which were to come before us.

Mr. KINNEY—The lecture to be delivered, then, will be delivered before the Committee of the Whole, on probably the most important question before this Convention, namely, the subject of Government, and that, I think, takes it out of the objection.

The question was put on the resolution of Mr. Kinney, and it was declared carried.

Mr. GRAVES—I call for the reconsideration of the vote upon the resolution offered by Mr. E. Brooks, day before yesterday, on the question of secret voting.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That the select committee of five, to whom was referred the article on Suffrage, be authorized to examine and report upon the expediency of providing for open ballot.

Mr. GRAVES—I received, a few days ago, a letter from a very intelligent gentleman from the western part of this State, commending very highly the course of this Convention in attempting to correct the evils now existing at the ballot-box, and saying that the whole evils grew out of the secret ballot. I have not given the subject much attention, and presume many of the members have not. I hope this resolution will be called up and examined at such a time as will suit the convenience of members of this Convention.

The question was put on the motion of Mr. Graves, and it was declared lost.

The Convention then resolved itself into Committee of the Whole upon the report of the Committee on Currency, Banking, Insurance, etc., Mr. CHESBRO, of Ontario, in the chair.

The CHAIRMAN announced the pending question to be on the amendment offered by the gentleman from Albany [Mr. A. J. Parker].

Mr. BURRILL—I am opposed to the amendment which has been offered by the gentleman from Albany [Mr. A. J. Parker] among other reasons, because I think it introduces a subject which is not properly within our control, and upon which we ought not to pass. Gentlemen who have discussed this subject have treated it as if the question were now to be propounded to us for our decision and passed upon by us whether or not the consolidation of railroad corporations under the circumstances stated in the amendment ought to be tolerated or allowed. It seems to me that is not the question before this committee. No such question is properly here. We are not to determine upon the expediency of granting permission to corporations of that description to consolidate with other corporations, but the only question with us is whether or not we are justified in inserting in the Constitution of this State a rule, which shall be inflexible, by which the Legislatures of this State for the next twenty years shall be controlled and governed, and which will prevent them from adapting their conduct and their legislation to the future wants of the people of this State. It seems to me, therefore, that gentlemen have not put the question fairly and properly before the committee. They have put it perhaps in the most favorable form to secure the adoption of views advanced by those parties who favor the amendment. But even if the question were here before us to determine whether or not we should grant (had we the power) leave to companies of this description to consolidate under the circumstances mentioned in this resolution, I submit we have not the means of information, we have not the data, we have not the facts upon which we could form any reliable or intelligent judgment. It is better, it seems

to me, for us to wait until that body, within whose appropriate jurisdiction this subject comes, may have an opportunity of determining what their action shall be, when all the facts upon which their action is to be based may be presented to them, and when the particular circumstances which may call for and give rise to that action may be properly presented. I submit, therefore, in addition to the objection that it is not a matter properly within our control, that even if it were one within our control upon which we were to pass, we have not sufficient information or light to enable us to form an intelligent and proper judgment. Now the objections which have been raised to the granting of this permission, or the reasons which have been urged why this amendment should pass, were among other things that it is inexpedient, ever to give corporations of the magnitude of those mentioned in this amendment, authority or permission to consolidate themselves with others, for fear of creating what one of the gentlemen on the floor calls an unusual and inordinate amount and magnitude of combined capital. It was stated in one of the objections to giving permission to increase the capital of any corporation, or any number of corporations, to the extent mentioned in the amendment, that it gave them vast power, gave them power to do much that was evil and prevent much which might be good and beneficial toward the people of this State. It seems to me that if there were any force in that objection, if there was any ground to suppose that the mere fact of a consolidation of companies securing an increased capital or a combined capital to a large amount, would be productive of injury, the same injury and the same danger to be apprehended would be as justly apprehended and as justly occasioned by any combination of corporations, who act upon the same capital as if they were consolidated. In other words, the evil to be avoided should be avoided by preventing combination of corporations; and if there be any force in the objection—if those evils are really to be apprehended, they should be avoided by preventing the combination of corporations, and, in regard to that matter, there would, of course, be a wide difference of opinion. It is said, again, by those who favor this amendment, that if permission of this kind be given, these corporations will exercise their power to bring to bear improper influences upon the Legislature, and induce them to pass laws which might be prejudicial to the entire people of the State. If we are to make a law here which shall be based on the theory that, for the next twenty years, there shall be no honest Legislature in this State, and that, during one-fifth of a century, the people of this State will not send men to the Legislature, a majority of whom shall be honest, then there might be some force in the objection; but I do insist we have no right to make a law which shall bind the people of this State for the next twenty years, which will be inflexible and cannot be changed, and do that upon the theory and upon the basis and upon the idea that the Legislatures of this State, for the next twenty years, are to be corrupt, and that no majority of a Legislature during that time will be composed of honest,

upright and conscientious men. It seems to me that whether or not Legislatures are honest, whether they are open to corruption or not, is a question upon which we have no right to determine so far as to assume that no future Legislature, during the period of time I have mentioned, will be other than corrupt and dishonest. It is again said that a permission of this kind will throw into the hands of these consolidated companies a great power, and enable them, in the language of one of the gentlemen upon this floor, to oppress the people of the State. I, for one, do not feel that I am able to decide in advance what should be the financial policy of the State in reference to this subject for the next twenty years, but it does seem to me that this idea that the power given to these corporations may be exercised improperly and to the detriment of the State during the next twenty years is one which will be within the control of the Legislature during that period of time, and that if there be any danger to be apprehended in this direction, it will be within the power of the Legislature of this State during that time to prevent it by proper restrictive legislation, and to control and manage these corporations so as to secure the people against the occurrence of these evils. Are we prepared to say that, with the light we have, with the knowledge we now possess, we are able to lay down a rule of conduct by which all future Legislatures shall be governed and guided, and that they shall not be left to adapt their measures to the future circumstances as they may arise, that they shall not be at liberty to propose such legislation as in their judgment the increasing wants of the commerce and the demands of trade may require? It seems to me we are not prepared to go that length. I, at least, am not prepared for one. And while I have very great respect for the gentleman who introduced this amendment, and also have very great regard for his colleague from Albany [Mr. Corning], who favors it, and who stated to us on the floor of this house what his experience had been, yet I suggest, with due deference to him, that the experience of that gentleman will bring him only up to the present time, and cannot carry him or us beyond this time, and I do not believe that he is, or that we are, sufficiently competent or have sufficient sagacity and foresight to anticipate what may be the demands of the commerce of this State, what may be the wants of the people during the next twenty years and what legislation may be rendered proper by the mutations of trade and commerce, and by those demands which will be occasioned by our increase, and by the change of our position. Now, sir, we must not, it seems to me, in considering this question, overlook the fact that we are not legislating or making a law which shall operate merely for one year, for five years, or for ten years—that we are not making a law, or laying down a rule of action which can be rescinded, which can be modified, which can be changed by any other body occupying our position here within a short period of time and who may be induced by arguments, and by new facts brought before them, to decide that our plan of action or rule as laid down, ought not to be followed. If there were any power behind us which

could change and abrogate what we do here, which could modify the provision which we propose to insert in this Constitution, so that the evil, if there be any evil, arising out of our legislation might be corrected, I probably would be willing to go, perhaps, for inserting in this Constitution some provision in regard to which I might have doubt, but in reference to which I might be disposed to yield my conviction and the convictions of those who seem better able to judge in regard to their expediency. But when I recollect that what we do here must last for twenty years, until the people of this State assembled again in Convention shall undertake to reorganize the Constitution of the State; when I recollect that, I am disposed to hesitate long and doubt much before I consent to insert here anything in regard to the expediency of which I doubt so much as I do in regard to the matter in question. Is there any gentleman on this floor who can say to himself that he thoroughly understands the whole of this subject? that he has sagacity enough to anticipate the condition of this State or of the people of this State at the end of twenty years? Can any gentleman tell us to what extent the resources of this State may be extended? Can he tell us to what extent drafts may be made on the resources of the citizens, upon their enterprise and upon their industry? Can he tell us what the resources of this State will be for the next twenty years, to what extent experience may show us they are capable of being developed, and to what extent here they must be developed, in order to meet the increasing wants of the people? I see no gentleman here that has sufficient sagacity and foresight to determine these things. But a short time ago, within the last twenty years, had any gentleman asserted that there would be in the present year telegraphic communication between the United States and Europe—that we should be within a few hours' communication of the capitals, not only of the British Isles, but all the capitals of the large empires within the more interior districts of Europe, he would have been set down as a madman, and his prediction would have been regarded as the mere vagary of an enthusiast; and if any gentleman had told us, twenty years ago, that in 1867 there would be a railroad, not only one, but two, built westward, and extending three or four hundred miles west of the Missouri river, he would have been set down as equally visionary and unsound. There are many gentlemen here who will doubtless recollect that, although the subject of a Pacific railroad has been talked of considerably, and debated, yet the number of people who advocated that measure were very few until within a short time past. What do we find now to be the condition of things in the western part of the United States? There are at this moment in the course of active construction westward of the Missouri river, the two lines of railroad to which I have alluded, one extending from the Missouri river far into the interior of the State of Kansas—another railroad, starting from Omaha, in the Territory of Nebraska, extending westward four hundred miles in the same direction. There is also a railroad in the course of active

construction in the State of California, which now runs to the foot of the Sierra Nevada mountains, and those under whose direction that enterprise is prosecuted are busily engaged in doing the work necessary for the purpose of extending that road to the eastward of that range of mountains, and combinations have been made between those having in charge the road west of those mountains, the Western Pacific road, and those having charge of the two eastern branches of the eastern road, now in process of construction, for the purpose of bringing about the completion of that work at an early day. Now, sir, there are men connected with the railroad company to whom allusion was made yesterday by the gentleman from Oneida [Mr. Alvord]—the great Pennsylvania Central railroad—who, it seems to me, have exhibited a vast amount of foresight and a vast amount of regard for the interests of their State in adapting their measures to the increasing wants of their people—in anticipating as far as they could what they deemed might be the requisitions and demands made upon their resources by the increase of transportation created by those new roads to which I have alluded. And the gentleman will find that those having in charge the Pennsylvania Central railroad, which has done as much as any other institution in the country toward the development of the resources of a great State—a road which extends from Philadelphia on the sea-board at the east to the extremity of the State in the west—that the gentlemen having charge of that road for the purpose of securing for it the benefit of the increased transportation and travel coming from the great West have so made their arrangements as that they have secured the control and the management of the eastern division of the Union Pacific railroad, which extends from a point three hundred miles west of the Missouri river to the town of Wyandotte, on the Missouri river, to which I have called attention. By the connections made between that road and the Missouri road, extending across the State of Missouri to the city of St. Louis, thence by means of a road extending from St. Louis to the city of Cincinnati, the Ohio and Mississippi road, thence over the road extending from Cincinnati to Steubenville, and thence to Pittsburg and Philadelphia, all of which is under the control and management of the managers of the Pennsylvania Central railroad, and they have secured for their State the immense transportation which will necessarily be carried over that road from the Western States. Are we not to look far enough into the future to see whether there be not, in the increased transportation and travel arising from the construction of these large roads in the western territory of this country, something to be gained for the State of New York? The Omaha road, which extends far west in the interior of the Territory of Nebraska, and west of the Missouri river, will be in a short time connected, it is hoped, with the city of Chicago, and there has been an effort made on the part of the gentlemen having charge of the Chicago and Northwestern railroad, to which the gentleman from Oneida [Mr. T. W. Dwight] alluded yesterday, there has been on their part a desire for some time to secure the construction of that road, so that the business from Omaha which

it might bring from west of the Missouri river might be diverted to the city of Chicago, so that they would be benefited by increased travel and transportation. And if that connection be made so that the road will run from its western extremity to the city of Chicago, there will be every inducement for us to enter into some financial arrangement, if it be necessary, for the purpose of securing transportation from Chicago eastward in a direct line, so that it might run from Toledo to Cleveland, Buffalo and Albany, to the metropolis of the State. I allude to these subjects, not because I pretend to have any more information in regard to this matter than other gentlemen have, not because I pretend I have more or as much ability as other gentlemen upon this floor to determine what shall be the financial policy of the people of this State for the next twenty years to come; but I allude to them for the purpose of showing that something may be said in regard to this question of importance, which may induce us to hesitate and pause before we lay down an inflexible rule of action by which the Legislatures of this State, for the next twenty years, shall be trammelled and fettered and prevented from adapting their measures to the increasing wants of the people. Independent of any objection which may exist in the mind of any gentleman present to the granting of permission to consolidate, were we now a Legislature, sitting here to determine on that question—Independent of other objections which may occur to the mind of any gentleman here, to grant leave to corporations of this kind to consolidate under the circumstances stated in this resolution, I oppose the amendment because I do not believe, in the first place, in legislating here upon the theory that for the next twenty years we are to have corrupt Legislatures. I do not believe that we are to legislate here upon the theory that for the next twenty years our Legislatures shall be under the control of corporations, or of dishonest men who will use their power to the detriment of the public good, and for the advancement of entirely private interests. And I do not believe we should legislate here on the theory that we know more than the legislators who may fill our legislative halls in the next twenty years, or that we can now legislate in regard to these matters, as well as they will be able to legislate with the experience of the next twenty years—an experience which will enable them to adapt their legislation to the wants of the people and the change of circumstances which may be brought out during that period of time. Above all, I am unwilling to insert in the Constitution of this State any rule for the guidance and control of future Legislatures over matters which, I think, are peculiarly within their control, over which they may exercise their jurisdiction with more light than we have now, and in regard to which they may legislate in such a manner as to prevent the consummation of wrongs, and prevent the injurious and evil consequences which the gentlemen advocating this amendment seem to think must necessarily follow. If we concede that consolidation may be objectionable, and that injurious consequences may arise from it, and that detrimental results may ensue, they are not incurable; they are such as

may be remedied by future legislation, and the Legislatures of this State may impose such restrictions and conditions upon granting permission to consolidate railroads as will at once secure the rights of the railroads and secure to the people the benefits of combined capital, and will prevent those evils and those injurious consequences which gentlemen apprehend. I am, therefore, for this reason, opposed to the amendment; and I ask gentlemen to pause, hesitate, and consider well this matter before they insert in the organic law of this State a rule or principle in regard to the expediency of which we have no means to determine accurately.

Mr. WAKEMAN—I think we have a right to judge of the future from the past. If you trace the legislation of this State a few years back, you will see what reliance can be placed upon legislation upon the particular questions connected with this very amendment offered by the gentleman from Albany [Mr. A. J. Parker]. A few years ago, sir, the several railroads of this State were consolidated, and at the time of that consolidation, by an arrangement with the parties interested in the railroads then to be consolidated, a bargain and compact was made with the people of this State that they were to be charged but two cents a mile fare, and it was entered into and enacted in the Bill of Consolidation. The people in that case received some consideration for the franchise granted, and it was supposed to be a bargain between the people, on the one hand, and these corporations on the other, which would be carried out in good faith in the future. What has been the result? Why, three years ago this consolidated company made application to the Legislature of this State for an increase of fare. It was passed by a considerable majority of both branches of the Legislature, and vetoed by the Governor. The next year this same proposition was brought forward again, and passed by both branches of the Legislature again, and substantially vetoed by the Governor then, because the bill was passed at the close of the session, and the Governor returned it to the Secretary of State without his signature. Was this sufficient to put a stop to the breaking of this contract? Not at all, sir. The term of office of that Governor was about to expire, and he was to be a candidate for re-election, and so far were the people of the State satisfied with his action upon this particular question, that when the nominating convention met, there were no competitors there for the nomination, and Governor Fenton was renominated, I believe, for the express reason that he stood between the Legislature and the people on this question. And the result was that he was re-elected, and a majority of his own political friends elected with him to the Legislature, and what was the result? Last winter this subject was brought up again for the third time, and we might naturally suppose, when the Governor had stood up boldly and performed his duty, as Governor Fenton had, that his political friends in the Legislature would have stood by him on this question, but they did not, sir, for a majority of both houses voted for it again, and passed the Central railroad fare bill. And this was not all,

sir. After that had been defeated again by the Executive veto, in the last expiring hours of the Legislature, and after their hundred days had expired, and they were not receiving any pay from the State, what was the thing witnessed then? Why, sir, it was too late to introduce a new railroad bill. But a move was made to go into Committee of the Whole on some bill already introduced, which was of no particular consequence, and what was done? An honorable gentleman, who had a good deal of power in the Legislature, moved to substitute another Central railroad fare bill after the enacting clause in the other inferior bill, and while members were anxious to return to their families they had left, when the time of year called men to go home and attend to their business; yet they lingered around these halls until the bill was passed through the Assembly, and it went to the Senate, and the Senate, I suppose, because they were so much disgusted with this kind of bills, rejected it, but the Legislature did not adjourn until that measure was rejected by the Senate. I will not charge that Legislature with corruption, but I ask gentlemen here, was that measure of the increasing of fare of the Central railroad bill demanded by the people of this State? The result of the election that had taken place before, was enough to show most conclusively that the masses of the people were with the Executive in that question. We believed in the country that there had been a fair bargain made with these gigantic corporations, and that they were in duty bound to carry out that bargain or their part as we performed ours on our part. I know it was said by reason of the depreciation in the currency that there was a reason for increasing the fare. Why, sir, when you look at it, when you come to deduct the United States tax and the State and local taxes from the dividend of this corporation, yet the net clear dividend of even their watered stock was more than any gentleman in this Convention receives from his mortgages laid by in his safe, and to-day that corporation, that was so far depreciated by reason of the veto of these bills—to-day their stock is worth more than par, more than any mortgage you have on unincumbered real estate. I ask in view of this, whether it is not proper for us to look and see if one corporation can do what it is claimed this corporation has done, whether or not we should look to see whether there shall be other combinations made. The argument of the gentleman who has just taken his seat [Mr. Burrill] has satisfied me of the necessity of this very amendment of the gentleman from Albany [Mr. A. J. Parker]. He has spoken of combinations that have been made without consolidation, and if the consolidation of that capital he has mentioned be made in the far West, we may bid farewell to civil liberty in this country, we shall be absolutely hampered and controlled by the monied corporations of the country. It is said here, shall we hamper future legislation? shall we hamper the commerce of the State? I say no; no, sir; by no means; but I submit whether fifteen millions of money is not sufficient in the hands of one set of directors to be used for any practical purposes in this State. I submit, so far as

the people of this State are concerned, whether it is not better to keep the corporations separate as they are now, rather than that they shall be consolidated. If you consolidate this Central road, and the Hudson and Harlem road, you can also consolidate the New York and Erie, and if gentlemen believe that that can be done, and we are not prepared to say what the Legislature would sanction, even if they stay beyond their one hundred days to sanction it, if we judge by the past, I ask what would be the result to the interests of the people of this State? If these railroads would content themselves by attending to their legitimate business as carriers of persons and property, that is one thing, but they turn their attention to something else, to control legislation and elections. It has been assumed on this floor that it would be injurious to the city of New York, and if it would be so, I say we ought to pause and hesitate before we put any restriction on the action of the Legislature, for the prosperity of the city of New York is the prosperity of the State of New York. Any financial shock there vibrates through the State at once, and through every portion of the State. We in the country are not opposed to the prosperity of the State at large, and I for one would be very loth to do an act by which we would cripple the energies of the city of New York, for by doing so we should cripple the energies of the whole Empire State; but in my judgment the prosperity of the city of New York depends not in consolidation like this, but in competing lines running into the city of New York, by which travel and transportation shall be cheapened. The Erie canal has been one of the great sources of wealth to that city. The great Central road has been another, and the connecting links with it. The Erie road has been another, and by keeping those lines separate and apart and thus carry on its legitimate business each by itself, with the competition there is existing between them, will be sufficient to cheapen fare and cheapen transportation, so that it will all tend to the benefit of the city of New York. Now, sir, I am prepared right here to vote for the amendment of the gentleman from Albany [Mr. A. J. Parker]. I do not know whether it will have the effect to put a check to combination or consolidation; perhaps it will not. But I believe in this—it will give an opportunity to this Convention to place their condemnation upon the acts of the Legislature wherein and whereby they have legislated specifically for railroads in opposition to the interests of their constituents. It will give gentlemen an opportunity to place themselves on record, to know whether they are or are not willing to place themselves in a position to say that they do not approve the acts of the Legislature on the subjects referred to. If one corporation can do what has been done for the last three years on the subject of raising fare on the Central railroad, what will be the effect of the combination of all these railroads upon future Legislatures? I wish to remove the temptation which may be brought before future Legislatures. Now, sir, the gentleman who has just taken his seat [Mr. Burrill] stated that he thought it was not within our control. That is the very object we are here for.

We are to a certain extent to control the Legislature, otherwise we might do without a Constitution at all. It is to restrain the Legislature for the future, and that is the reason I am specially in favor of the amendment offered by the gentleman from Albany [Mr. A. J. Parker].

Mr. FLAGLER—I approve of the object sought to be attained by the amendment of the gentleman from Albany [Mr. A. J. Parker], but I have great doubts whether, if adopted, it will prove of any practical benefit, and I send up to the Chair an amendment which I desire to have read, as indicating my own opinion as to how these combinations or consolidations of railroad companies may be prevented to the injury of the public. I ask for the reading of this amendment on that subject.

The SECRETARY proceeded to read the amendment, as follows:

"The sale or transfer of the franchise of any railroad corporation of this State shall be void, except by express consent of such stockholders thereof."

Mr. FLAGLER—If the consolidation of railroad companies in this State is injurious, it should be borne in mind that, judging by the past, they have been, largely to the injury of an innocent class of stockholders. They have come to be stock-jobbing operations. A certain part of the stockholders in a railroad of value acquire for a song another railroad without value, and before the innocent stockholders are aware of it they are saddled with the stock, and the stock is made part and parcel of the railroad stock that has value. It is this temptation to make money by this process that has brought about, I think, most, if not all, of the railroad consolidations in this State. Now, if the consent of the stockholders were obtained, then, and only then, in case there was a real necessity for consolidation, where the objects sought for were of decided utility, it would be in that case only that consolidation would occur, and in that case I take it for granted that the interests of the public would also be as well promoted. Hence the proposition of the gentleman from Albany [Mr. A. J. Parker], is not as good as the one I have the honor to submit, and I think this will better attain the object he has in view. He proposes to limit consolidation by fixing an arbitrary sum, a limit beyond which it cannot go. I propose to fix it by the consent of the parties interested. I think it will reach farther, and it will be more likely to protect the interests the Convention should protect in considering this subject, the interests of the stockholders, and in protecting their interests it will protect the interests of the State at large.

Mr. OPDYKE—I am compelled to differ with my friend from Niagara [Mr. Flagler] and shall have to vote against the proposed substitute. He assumes, it seems to me, that we are here to make a Constitution that will promote the interests of stockholders in corporations. I think we are here to make a Constitution that will protect the rights of citizens at large, and is very well known that the interest of shareholders and corporations are often and I think I may say almost universally antagonistic to the rights of the citizen. It is the very object of incorporation, and especially

of grasping and overshadowing incorporations where a large amount of capital is aggregated to increase the power and the profits of the shareholders. It seems to me that the plan the gentleman has proposed requiring the assent of every shareholder is no protection whatever against this danger to the interests of the citizens. I desire also to say a few words in reply of the gentleman from New York [Mr. Burrill], who has spoken this morning. It seems to me that his argument, taking it in its full scope, would deny to us the right, or at least deny the expediency, of inserting in the Constitution any limitations of the legislative power. We certainly have the same right to do it in regard to corporations that we have in regard to any other subject. In fact we have just voted into this particular article a provision depriving the Legislature of the power of creating corporations by special act. In fact, nearly one-half the duty we are called upon to perform in this Convention is to determine what legislative restraints will best promote the interests of the people of this State. I hold, sir, that we have the right, if we deem it expedient, to declare in the Constitution that there shall be no aggregation of capital in any one corporation exceeding a given amount. We know those large aggregations to be dangerous; we have but to look back to the existence of the Bank of the United States, which attempted to control the legislation of Congress and the policy of the government. We have but to look at the East India Company, which has for all time controlled the policy of the British government in regard to its eastern possessions; we have but to look today at the State of New Jersey, or at the State of Pennsylvania, to see that those large, overshadowing monopolies are there controlling the policy of those States. Now, sir, if we have a right, as I hold we clearly have, to say that no corporation in this State shall be organized with a capital of more than fifty millions of dollars, and I know many citizens of New York desire we shall put in that very limitation; if we have that right, clearly the larger embraces the smaller. This is a portion of that power, and we have a right to do it. Then again, in regard to the history the gentleman from New York [Mr. Burrill] gave of the railroads of the West, it is only necessary to say of those vast lines of roads which are reaching from the Atlantic to the Pacific, that there does not exist in any one State a portion of them requiring a capital larger than the amount authorized in this State by the proposed amendment. Then, again, they have the right to combine, to make arrangements as to the freight and passengers carried mutually over them. We do not propose to interfere with that. That is useful to them and to the public. But we do propose to act for the benefit of the citizens of this State by securing to them for all time the principle of free competition in the railroad lines of the State. Two of the gentlemen from New York, who spoke on this subject yesterday, objected to the amendment on the ground that it would endanger the commercial prosperity of New York. Neither of those gentlemen can feel a more lively interest in that prosperity than I do; and I will spend a few moments in endeavoring to allay their apprehensions on that point.

Commerce consists in the transportation as well as in the exchange of property. Without facilities for carrying products from places where they are produced to the markets where they are distributed and consumed, it would leave the merchant without any vocation. It is a truism to say that the greater those facilities and the more cheaply and expeditiously these products can be carried, the better for commerce. The more rapidly and cheaply freight and passengers can be carried from the interior to the city of New York, and thence to the interior, certainly the better for the commerce of New York. The question here is simply this: Will those facilities be increased or the charges reduced by permitting the consolidation and the consequent monopoly of all the railroads in the State? I think the question answers itself. There is no merchant in the city of New York so ignorant of his vocation as not to know that the life blood of commerce is free competition. In fact, the very object and purpose of monopolies is to increase the power and to enhance the profits of their shareholders by enabling them to charge higher rates for the services they render. The argument, therefore, that any restraint of the character proposed by this amendment would endanger the commercial prosperity of New York is utterly fallacious. In fact, the exact converse of the proposition is true; the prohibition of such monopolies will promote the prosperity of that city by protecting it in the future from the impending danger of vast railroad monopolies that may compel the merchants of the city of New York to pay tribute for all time to these monopolies through increased charges for the transportation of passengers and freight. The danger to the State itself is even more serious than that to commerce. The capacity of such monopolies to control the action and destroy the purity of legislation, has been demonstrated in adjoining States. Let us, while our State is yet free, protect her from the iron heel of such monopolies, by putting in the Constitution the proposed inhibition.

Mr. GOULD—The question, as has been stated by the gentleman from New York [Mr. Burrill], is, whether it is proper for this Convention to bind the Legislature for twenty years in relation to any financial question whatever. It seems to me, sir, that the gentleman has answered his own question. He voted only yesterday that the power to make corporations (which is a financial question), should be limited, that they should only be created by general laws. He expressed the opinion by his vote, that if the Legislature shall find anything good and valuable to enact for the benefit of the city of Troy, they shall not enact a statute for the benefit of Troy alone, but they shall enact it for the benefit of Albany, Elmira, Syracuse, and every other city in the State. I answer the gentleman's question that it is right to bind the Legislature, if in the judgment of the Convention such powers shall be dangerous to the liberties of the people of this State. We are bound to conserve those liberties by providing every possible constitutional security, we are bound by our oaths, we are bound by our interests, we are bound by our sense of

duty and morality to restrain legislation in all these cases. Now, is not the power of consolidation a dangerous power? Are the liberties of the people endangered by granting it? It seems to me that we have only to cast our eyes over the current history of the States for the last twenty years to satisfy ourselves that it is replete with dangers. Those gentlemen who are familiar with the history of the Pennsylvania Central railroad know what a tremendous tyranny has been exercised by that road over the people of Pennsylvania. I have been told by gentlemen, who knew what they were saying, and who had ample means of verifying their assertions, that the Central railroad of Pennsylvania owns a magnificent railroad car containing parlors and bedrooms and kitchens, and everything for the convenience and comfort of travelers, and that car is kept solely for the benefit of committees of the Legislature, the Governor of the State, and for judges of the State, and I was assured, sir, and I have no doubt of the fact, that whenever a session of court is to be held in any portion of the State, that car is placed at the disposal of the judges. Well, sir, what is the result? I am no lawyer, and yet I have read with a great deal of interest a judgment of the Supreme Court of Pennsylvania upon the subject of the sale of the Catawissa railroad. In a case where the Catawissa railroad was sold by its proprietors to the Atlantic and Great Western railroad, and the judgment of that court, on an application for an injunction to restrain the directors from consummating the sale, was that that bargain ought not to be carried out, and the injunction was made perpetual. I looked in vain in that decision for any legal principle involved in the granting of that injunction, but I could not find it. The only ground alleged was that public policy was opposed to it. They stated that the Pennsylvania railroad had done so much for the interests of the State of Pennsylvania that it was wrong to allow any combination of railroads adverse to the interests of that particular road. That is all I could find in the judgment. Now, I do not want to be uncharitable, but I put this and that together. I remember how the judges have been accommodated; I remember how the cook of the company was allowed to go there and get up their magnificent private dinners for them when riding, and I cannot help thinking that this had something to do with the decision. When I find the granting of the injunction placed on that ground, and that ground alone, I cannot but believe that the accommodation they received had something to do with making that decision. So, sir, with the New Jersey Central railroad company. They have an officer called a vice-president of the road, who has no visible duty whatever, no duty assigned to him by the statutes or the rules of the board, but it is known that that vice-president has the power of drawing checks upon the treasurer of the company, which are paid without any inquiry whatever, and it is known by the gentlemen who investigated the matter, that those checks have been paid to distinguished politicians of New Jersey, of both political parties; and the inquirers, who have examined into the matter with the utmost care, have been utterly

unable to find any legitimate service which these politicians had rendered to this road. Now, sir, I put this and that together, and I infer that the Central railroad of New Jersey has exercised an unwarrantable power over the politics of New Jersey, and over its courts. What have we found to be the result of the operations of a great railroad on the people of New York? Why, sir, we know that when the Central railroad of this State was first chartered, they were required to pay the canal tolls. It was for the interest of the treasury of the State that they should pay those canal tolls. They had a number of populous villages along the line of the road, which had been built up by the canal, providing business ready made to their hands, and they were very properly required to pay the tolls on their freight, similar to those which were assessed on the canals; on the other hand, the Erie railroad passed through almost a wilderness country, and had no benefits of this kind; yet, sir, although the managers of the Central railroad were equitably bound to pay these tolls, their officers were found buzzing about these chambers, taking men by the shoulder and whispering to them, and it was invariably found in these cases that those gentlemen went home richer than they came here, although their board bills were greater than the pay they received, still they were richer after they went home. I put this and that together, and I infer that the great monopolizing railroad of this State have acted injuriously to the liberties of the people of this State, and I infer that its powers should not be enlarged. I know, sir, as at present organized, the Hudson River railroad and Harlem railroad have the power to dictate who shall be members of the Legislature all along the line of those roads, and I know they exercise a great influence in the political conventions of the several parties of this State. Now, I do not allege that the people of this State are corrupt; no one has the right to draw any such inference from any remarks I may make; but we do know that these great corporations are able to act with a concentration of power that the people themselves cannot exercise. All these corporations have depots placed at very short distances from each other all along the line of the road, these depots are supplied with agents, ticket-masters, wood-sawyers, track-repairers, and an enormous number of other persons, clustered around it in the employ and pay of the company. Now, sir, no matter what the politics of these officers are, when it comes to the railroad question the political millenium anticipated by Mr. Jefferson is found to have arrived; they are all federalists and all republicans; their only politics are the interests of the road and they act as a unit upon every question where those interests are involved. We know how these things are done. All these individuals are acquainted with a certain number of persons; they go round to these persons and say to them that A B is a very clever man and that he is exceedingly well adapted to represent them in the Legislature; they are told he is a good and liberal man, and it is proved to a certain class of them by A B going round and treating them; there is another class of individuals,

and for these he procures free tickets on the railroad, and in these various ways, without telling the individuals that he desires to bribe or corrupt them, he acquires a kind feeling on the part of the voters, and when the time comes these are all concentrated, and the railroad company is enabled to make up for its deficient numerical strength by the perfection of its organization, and the ingenuity of its arrangements. This is the way these things are done; not by direct corruption; the people are ignorant of the wiles and devices by which they are beguiled, and have no idea of doing anything wrong, but we know that these plans are efficient. We know that they have acted successfully in times past to produce these results, and that the State has been governed by their influence. If these institutions as at present organized are enabled to do so much, have we not reason to suppose they will do a great deal more when they are consolidated. We have at least this advantage, so long as they have not become consolidated; we have a possible antagonism of interest between the two different corporations, and this antagonism may and often does operate in the interests of the people, and protect them from the gigantic and crushing tyranny which would be exercised if they were all acting as one single corporation. It is true that one man of wealth may buy up the control of all these roads, but he will die in time. A corporation never dies. It is alleged that great dangers will ensue to the commerce of the city of New York by the passage of the amendment, by the gentleman from New York [Mr. J. Brooks]. I do not look for anything of this kind, sir. It will be remembered that the tea trade of Boston was diverted to New York because it could be carried there by the almost infinitesimal fraction of a cent cheaper than it could be carried to Boston; so the sugar trade of Baltimore was diverted from that place to New York, because it could be carried to New York by a still smaller fraction of a cent cheaper than it could be to Baltimore. Interest, in the long run, will always operate to control these matters. The competing roads against New York which have been alluded to here on this floor, are compelled to go over the Alleghany mountains. There is a very great increase of expense arising from drawing all the freight five thousand feet up perpendicularly, and then drawing it down again, and this will always operate as a bonus in favor of the railroads of New York; we have the only outlet through the great valley of the lakes, where the track is entirely level, and we can under all circumstances carry the freight cheaper to the seaboard than it can be carried any other way, and as long as that fact remains there is no danger whatever that the interests of New York will be invaded. There is a power in the persistent operation of commercial interest which will always regulate that matter, and we need not be at all afraid of the bugbears which have been conjured up by the imaginations of gentlemen who are in favor of promoting this consolidation of the gigantic railroads of the State. I must confess I have very great confidence in the testimony which has been given upon this floor with regard to the operations of this measure. The

gentleman from Albany [Mr. Corning] announced yesterday, in a few brief and oracular words, that his experience as a railroad manager convinced him that the amendment of the gentleman from Albany [Mr. A. J. Parker] ought to prevail. I must confess, sir, that his very great railroad experience, transcending that of any other man in the State, operates very strongly upon my mind, and I think it ought to operate strongly upon the minds of every member of this Convention. We have heard from a prominent gentleman in New York [Mr. Opyke], whose name is known all over the world as identified with its interests, and who has the best means of knowing what is to its advantage and what to its disadvantage; he has risen here this morning and expressed his opinion that there is no danger whatever to the interest of the city of New York from the passage of this amendment. Sir, I think the experience and knowledge of such a man as that ought to outweigh the fears of the lawyers of New York upon this floor, who have expressed their opinions on this subject. I am in favor of the amendment of the gentleman from Albany [Mr. A. J. Parker], and sincerely hope it may pass.

Mr. PAIGE—It seems to me, sir, that the gentlemen who have spoken against the amendment of the gentleman from Albany [Mr. A. J. Parker] greatly misapprehend its effect in respect to the point that a prohibition of a consolidation amounts to a prohibition of an intimate connection between connecting roads in the transportation of passengers and property. This misapprehension surprises me. The central trunk line of railroads between New York and Buffalo has been operated for twenty-five years and upward in the same manner as if it had been one road under contracts made between the directors of the several companies. Trains of freight cars have, ever since 1853, and before, passed from New York to Chicago over this line and the roads west of Buffalo, without any transhipment of freight; and passenger cars have for a long time run from New York to Buffalo without change. All this has been done under equitable and beneficial arrangements made by the connecting companies. The difference between this plan of operating these railroads and that under a consolidation is that the latter consolidates all these companies into one great corporation with their aggregate capital, and placing this corporation under the management of one board of directors and perhaps under the substantial direction of one head, one mind, and one will. If the business and commercial prosperity of the State, and especially of the city of New York, has not been injuriously affected by a running of these connecting roads under equitable arrangements made by the different companies, then the question is, sir, whether that is not the best mode by which the two parallel lines between New York and Buffalo should be operated. If we look into the figures exhibiting the amounts of capitals of the several corporations composing these two great parallel lines, they will show the necessity of a restriction upon the Legislature in respect to its power to authorize the consolidation of railroad companies. The aggregate of the capitals of the New York Central, Hudson River and Harlem railroad companies, including Buffalo

and Erie, controlled by the Central, and the Canadaigua, owned by it, is \$44,543,891. Add to this the funded debt of these four companies (\$28,621,354), which represents their property, which is their actual capital, and the aggregate of the actual capital of these companies will be \$73,175,245. The capital and the funded debt of the Erie railway is \$41,051,700. Add this sum to the capitals and funded debt of the New York Central and Buffalo and Erie and the Hudson River and Harlem, and the aggregate is \$114,226,945. This statement shows what combinations of railroad capital can be made in the form of consolidation, unless a restriction is imposed upon the power of the Legislature. A consolidation of a capital of \$73,175,245, or one of \$114,226,045. Can any delegate look at this startling exhibit without alarm? Can he feel no apprehension of danger to public liberty and private rights from such mammoth corporations and gigantic capitals under the exclusive control and direction of one head, one mind, one will? I do not believe it is possible. The power which would be centralized by either of these consolidations, or the power of one board of directors may, in the hands of one man who controls the board, be irresistible. The people of the State could not cope with it. The Legislature could not stand up against it—its easy virtue could be surrendered upon the first demand, and the question is whether it is not wise and judicious, and whether precautionary measures should not prevail with this Convention to interpose some restrictions upon legislative power which will deliver us from the malign influence and oppression of such an overgrown money power as that to which I have referred. I do not say that the gentleman from Albany [Mr. A. J. Parker] has adopted the proper amount of capital in his amendment. It may perhaps be safe to allow a consolidation of a larger amount of capital than \$15,000,000; one with \$20,000,000 might be permitted. In my judgment the obligation is imperative upon us to prohibit by a proper constitutional provision the consolidation of railroad companies with such an enormous amount of capital as is said to be contemplated by the owners of the Hudson and Harlem roads. That such a consolidation is intended is demonstrated by the zealous opposition to the amendment of the gentleman from Albany which it is said the parties to such consolidation are making. That the adoption of the amendment will have a prejudicial effect upon the business and commercial prosperity of the State, or of the city of New York, I have no apprehension. There has been no difficulty in the rapid and uninterrupted transportation and movement of property on the Central line, although not consolidated and managed by different boards of directors. Consolidation cannot improve the management of these roads or in the slightest degree benefit the public. But I can clearly see how it may damage and prejudice the commercial interests of the State. Place the exclusive management of all these roads, in the form of a consolidation, in the hands of one board and the prices of the transportation of freight and passengers will be controlled by that board. These prices may be put up at a much

higher figure than the usual rates, and sufficient to make the business very remunerative to the stockholders, but very prejudicial to the public interests and to the commercial prosperity of that great city which has been so ably defended by the delegates who represent it in this Convention. The trade and business of the city of New York do not depend upon a monopoly in the transportation of property by rail, under one direction, to and from the West. But it depends upon the free competition between parallel lines, cheapening the prices of the transportation of freight. Put the control of all these railroads in the hands of one board, and the prices of freight will be subject to its exclusive regulation, and there will be no power in the State able to control these prices. Again, what would be the influence, I will not say the political influence, but the moneyed influence of this mammoth corporation, and to what purposes would it be directed? Will any Legislature have the honesty and fairness to resist its demands, and refuse any application it should make. A capital of upward of seventy or a hundred millions would make this corporation irresistible. It is the duty of this Convention to provide against the creation of a corporation with such a gigantic capital; the creation of a money power of such fearful magnitude, portending danger to the liberties and prosperity of the people of the State. Again, it is well known that water transportation is decidedly cheaper than rail transportation. New York has now the benefit of water transportation from Albany. The New York Central operated by one board, when the Hudson river is open, can avail itself of water transportation to that extent which, of course, cheapens the price of transportation, for the benefit of the shipper, of the consumer, and of the city of New York. Consolidate the roads from New York to Buffalo, and the river will be ignored, as it will be the interest of the consolidated company to carry everything by rail. Hence you will have the prices increased, at the expense of the shipper and of the consumer, and to the prejudice of the city of New York. Again, if this consolidation is accomplished, it will go beyond Buffalo; it will certainly take in the Buffalo and State line railroad, perhaps the Buffalo and Erie, and then by an intimate combination, it may be carried on to Chicago. Now, we are to choose between the system of operating these roads under separate management, by virtue of mutually beneficial and equitable arrangement between them, or the system of consolidation. I think the former is decidedly preferable. I cannot conceive how commercial prosperity is to be advanced, how business is to be increased, and how the city of New York is to be benefited by the consolidation of all these roads and the putting the whole of them, with their immense capital, under the direction of one head, one mind, and one will. It seems to me we are admonished by the probability, nay possibility, of such a consolidation to impose a restriction upon the Legislature in authorizing it, and is there not reason to apprehend danger that the moneyed power of so great a corporation will be used for political purposes; at least so far as may be necessary to obtain such grants from the

Legislature as it may desire. In reference to this object may it not use its influence and power in securing the election of members of the Legislature who will favor and promote its interests? All these reasons justify and require us to introduce into the Constitution the amendment of the gentleman from Albany, or some amendment similar to it. This restriction is not against the creation of a new corporation. A new corporation may be created and organized with any amount of capital. The restriction is directed only against the consolidation of existing companies. Without such a restriction, we have seen that all the companies composing the two parallel lines between New York and Buffalo and the Suspension Bridge may be consolidated. Against this we must provide; and in providing against it we will avert the evils it will bring upon us. In my judgment, there is a fatal objection to a consolidation of the New York Central with the Hudson River and Harlem. The Central terminates at Albany, where it connects with the Hudson river, of which, while that river is open, it can avail itself in transporting its freight to New York. This is a great advantage this road has over the Hudson and Harlem. And the use of this river is a great advantage to the public, and especially to the city of New York, in cheapening the prices of freight. New York will derive no benefit from a consolidation, but will be materially injured by it. Now, it has the benefit of the cheaper water rates, and of the competition between the Hudson River road and the river, and between the Erie and the Central. It reaps all the advantages of consolidation from the intimate connection between the several roads composing the Central line to Buffalo in the operating of that line, without any of the evils of consolidation. And I am surprised that any opposition should come from the delegates of the city of New York to the amendment of the gentleman from Albany. I have another objection to the consolidation of the New York Central with the Hudson River and Harlem railroads. The stock of the former is of much greater value than that of the two latter companies, and any consolidation that shall be made under the direction and auspices of the owners of the Hudson River and Harlem will be prejudicial to the stockholders of the Central. The latter cannot expect, under such circumstances, to be allowed in any such consolidation, the full value of their stock.

Mr. HATCH—I do not rise for the purpose of detaining the Convention at this time. It is very plain that the debate indicates the importance of the question which is now before the committee; it foreshadows a great issue, which the gentlemen of this Convention at some future day will have to meet. I only desire to say at this time that I approve of the amendment of the gentleman from Albany [Mr. A. J. Parker]. It strikes a blow, in my opinion, at one of the most gigantic evils of the day, and that is consolidation. I wanted to say that before I made the motion I am about to make, which is, that for the convenience of the members of this Convention who live at remote places in this State, for the purpose of their accommodation, I move the committee now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Hatch, and was declared carried, on a division, by a vote of 41 to 29.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. CHESEBRO, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on Currency, Banking, etc., and Corporations other than Municipal, etc., had made some progress therein, but not having gone through therewith, had instructed their chairman to report that fact to the Convention, and ask leave to sit again.

The question was put on granting leave to sit again, and it was declared carried.

Mr. LIVINGSTON—I desire to ask leave of absence until Tuesday morning.

No objection being made, leave was granted.

Mr. FLAGLER—I ask the same leave for Mr. Bowen of Niagara,

No objection being made, leave was granted.

Mr. C. C. DWIGHT—I move that this Convention now adjourn.

The question was then put on the motion of Mr. C. C. Dwight, and it was declared carried.

So the Convention adjourned.

MONDAY, August 19, 1867.

The Convention met at 10 o'clock.

The Journal of Saturday was read by the SECRETARY, and approved.

Mr. WEED—There are so few members present Mr. President, it seems to me it would be hardly proper to go into Committee of the Whole on the pending report, and for that reason I move that we now take a recess.

The PRESIDENT—The Chair rules that less than a quorum cannot take a recess; but under the former order of the Convention, providing for a recess till half-past seven o'clock, which was the act of the majority, he will declare this Convention adjourned till half past seven o'clock this evening. It is evident there is nothing approximating to a quorum present.

So the Convention took a recess.

EVENING SESSION.

The Convention re-assembled at half-past seven o'clock.

Mr. BARKER—I offer the following memorial and ask that it may be read.

The SECRETARY proceeded to read the memorial:

At a special council of the Seneca Nation of Indians, held at the council-house on the Cattaraugus Reservation, on the seventh day of August, 1867. Present: Peter Snow, *President*, Jacob Dolison, Moses Lay, William Nephew, Thomas Jones, Jabez Jones, John Jack, Johnson Jameson, Amos Shongo, Wm. Patterson, Peter Jameson and Peter Sundown, *Councillors*.

The President stated that information had been received, that propositions were being entertained by the Hon. Constitutional Convention, in session at the city of Albany, to make Indians citizens of the State of New York, and for the parceling out and sale of their lands, but that

such information was not as full and definite as might be desired.

Councilor Peter Jameson then presented to the consideration of the council the following memorial of the Seneca Nation of Indians, to the Hon. Constitutional Convention of the State of New York:

The council of the Seneca nation of Indians, constituting the representative government of said nation, do very respectfully yet most earnestly and solemnly protest against all propositions looking to the destruction of our form of government, as a distinct community, and to the survey and division of our lands with a view to the ultimate extinguishment of our title to the same. We believe the time has not arrived when it would promote our interests as a people to become citizens of the State of New York. That our people are not yet sufficiently advanced in civilization; that not one-fifth of them can read or write, and they have very little knowledge of the institutions of your State and country. The Seneca nation of Indians, residing upon the Cattaraugus and Allegany reservations, claim the right under the Constitution of the United States and existing treaties with them, to continue to remain an independent community so long as they shall choose to do so. We believe our people are unanimously opposed to becoming citizens of New York, and are equally opposed to the division of their lands, except by allotments by the council in manner as provided by sections 16 and 17 of chapter 365 of the Laws of 1847. We, therefore, humbly pray that we may be let alone, to work out our own destiny upon the small parcels of land still left to us for our and our children's inheritance, to respect our title to which, as inviolate, the overshadowing governments of New York and the United States are alike bound by the most solemn treaties and contracts.

On motion, the memorial was adopted, and the council directed that a copy of the same be sent to Hon. George Barker, to be presented by him to the Convention.

PETER SNOW, *President*.

The memorial was referred to the Committee on the Relations of the State to the Indians residing therein.

Mr. CHURCH presented the petition of citizens of New Rochelle on the liquor question.

Which was referred to the Committee on Adulterated Liquors.

The PRESIDENT presented a communication from F. A. Alberger, President of the Board of Canal Commissioners, in answer to a resolution of the Convention, adopted the 3d instant.

Which was referred to the Committee on Canals and ordered to be printed.

The Convention then resolved itself into Committee of the Whole on the joint report of the Committees on Banking, Currency and Insurance and on Corporations other than Municipal. Mr. CHESEBRO, of Ontario, in the chair.

The CHAIRMAN announced the pending question to be on the amendment offered by Mr. Flagler, to the amendment offered by Mr. A. J. Parker, which the Secretary again read.

Mr. GREELEY—I desire to present a few considerations which lead me to oppose both amend-

ments now before the committee. In the first place, I am opposed to all illusory and unsubstantial guarantees, whether against abuses or in defense of existing rights. Nothing can be more unwise than to blend in our Constitution laws that the public will regard as safeguards against great dangers, but which in reality are not, and they thereby be left to relax the proper vigilance which experience has proved to be the only true defense of liberty and justice. We have abundant experience to show that when two railroad corporations find their interest in a substantial conjunction or coalition, that coalition is certain to be established. Whatever you say or do can only forbid a formal legalized coalition. The real substantial conjunction of interests is entirely beyond your reach. We see that in this State today. Here we have railroad corporations, nominally independent, nominally owned by different stockholders, and managed by different boards of directors, and yet, whenever it suits the interests of their leading stockholders to throw them into a common pool, they will do so, and no law can reach them. I object, then, that this provision will seem to establish guarantees and safeguards, when really it can afford none at all. Then I object to the arbitrary character of the original amendment of the gentleman from Albany [Mr. A. J. Parker], which says that no more than fifteen millions of capital, as I understand it, shall be coalesced or conjoined into one interest. Why fifteen millions rather than ten, five, twenty or fifty millions? It seems to be entirely arbitrary to have no palpable, distinct or clear foundation, in justice or natural law or public interest. It seems to me to be an entirely arbitrary sum fixed by caprice or accident. No one can say why fifteen rather than twelve or twenty millions should be the amount above which we shall forbid the owners of railroads to join their interests. In another respect I object to the subsequent amendment; I understand the gentleman from Niagara [Mr. Flagler] proposes that there shall be no conjunction of railroads unless every stockholder shall agree to it. I have known instances where men have bought stock in a corporation for no other purpose than to prevent such a conjunction as this—have bought one, two or ten shares—not in the interest of the corporation in which those shares are held, but in the interest of rival corporations. Is this right? Here is a company say, with a capital of twenty or thirty millions; the interest of that company clearly points out and recognizes a certain line of policy—say a conjunction with another road, but some persons who have an adverse interest to this road, buy five or ten shares in this company for no other purpose than to prevent this junction which the interest of this company requires; and thus, instead of being an act really for the benefit of the stockholders of this company, it is an act of a rival person who buys a share of stock in this company for the single purpose of annoying embarrassing and injuring its interests. Both these propositions seem to me objectionable and both seem calculated to combine powerful pecuniary interests against the Constitution which we shall frame if they should be adopted. I trust we will make here a Constitution which will not needlessly combine some thousands of votes against it. We can-

not afford to make unnecessary hostility; we cannot afford to provoke it. We who wish to make and adopt the Constitution cannot afford unnecessarily to give persons outside reasons for voting against and trying to defeat our labors. I trust, therefore, that the friends of the reform movement, those who desire the Constitution not only to be framed but adopted, will vote down both of these propositions.

Mr. SILVESTER—I have listened, sir, very attentively to this debate, but have as yet failed to hear any reason advanced in support of the amendment which has been offered by the gentleman from Albany [Mr. A. J. Parker], which can induce me to give it my support. I had intended to cast merely a silent vote on this subject, but as my colleague [Mr. Gould] and myself do not agree in our views, and as the opinions which I entertain differ from those which he has expressed upon this floor, I consider it my duty, very briefly to state some of the considerations which will influence me in the course that I shall pursue in this matter. If this amendment should be adopted and incorporated in the Constitution which we propose to submit to the electors of this State for their approval or disapproval, before that act could take place certain consolidations of railroad companies might be effected in this State—might be completed and become a fixed and definite fact before this Constitution could be submitted and ratified by the people, and if it should be adopted with this disqualifying clause, then forever hereafter in this State while that Constitution should remain in force, until it might be amended, there would be an absolute prohibition against any other connecting lines consolidating; and thus a monopoly would be sanctioned in the State, guarded, enforced and protected by the Constitution itself. I ask those gentlemen who have been advocating this amendment, and proclaiming that they are enemies of monopolies, hostile to their existence and power, and that this State has such great danger to anticipate from corporations and consolidated railroad companies, if they are willing to place a proposition in the Constitution that might accomplish the very result which they profess and desire to avoid. But, again, the argument which has been advanced by gentlemen in favor of this proposition, it seems to me, proves too much or else the amendment which the gentleman from Albany [Mr. A. J. Parker] has offered does not extend as far as it should to effect the purposes which he contemplates and designs. If it be improper and inexpedient that railroad companies should consolidate so that their combined capital should exceed fifteen millions of dollars, then it must be inexpedient and improper that the capital of any railroad company in this State should exceed that amount, and if we place ourselves upon the record and in this Constitution which we are framing as asserting that it is improper for railroad companies to consolidate provided their combined capital shall exceed the sum previously named, then I contend that upon the same ground of reasoning, we must be prepared to accept the conclusion that it is improper and inexpedient to permit any railroad company to be organized whose capital may exceed fifteen millions of dollars, and unless we are prepared to adopt this

conclusion and to admit that the formation of such a corporation would be dangerous to the interests of the State, I submit that we should not insert in the Constitution, this provision which the gentleman from Albany seeks to have incorporated therein. But if it is improper for railroad companies combined to have a capital exceeding that amount it must be equally inexpedient to allow any incorporation or association, in whatever business or enterprise engaged, to possess or wield a capital larger than that specified in the amendment. And in its ultimate analysis the argument reduces itself to this, that it is dangerous to suffer any individual to accumulate and hold property to a greater extent than fifteen millions of dollars, and that it is hazardous under any and all circumstances to permit capital to exercise its force and power beyond that limitation. This is the proposition which we would embody in the Constitution as the result of our deliberate judgment and which we would commend to the approbation of the people of this State, if the amendment should be adopted. The conclusion cannot be avoided in whatever light the argument may be viewed. The object of prohibition is to provide protection against the power and influence which such an amount of capital would confer, and capital in whatever shape it is held and operated and in whatever manner it is exercised, and whether controlled or directed by an individual or a corporation must wield a mighty influence and power. But whatever our views may be with respect to this subject, whether we desire to impose the restriction which is under discussion, or consider that it would be unwise and unadvisable, whether as a question of political economy we are advocates or opponents of the measure the Constitution of this State, in my judgment, is not the proper instrument in which to incorporate such a provision. It is binding an important and essential interest in this country for twenty years to come with a chain that cannot be broken. It is not like a law of the Legislature which can be passed one winter, repealed, amended or altered the next. When this article is once included in the Constitution, it cannot be amended except by a difficult, laborious, and expensive process. Now, who can tell; what gentleman in this room is prepared to say what will be the wants or demands and necessities of the next twenty years; who is prepared to limit the facilities which shall be furnished for the claims and exigencies of commerce and trade in this State; who is prepared to assert that the railroads of this State will be able to perform the work which in the progress of the future must be required of them, if not permitted so to consolidate as in any case to exceed fifteen millions of dollars in the amount of capital to be employed in carrying on their operations? The railroad interest of this country is yet in its infancy. See what it has already accomplished; how it has developed the West and peopled our territories and far distant States with an active, busy, industrious population. See how like magic under the genius of its influence populous cities have taken the place of primeval solitudes; forests yielded to the hand of civilization,

palatial mansions been reared where the war-whoop of the savage had hardly ceased, the desert been transformed into a garden, and all the arts, refinements, and luxuries of cultivated life introduced, cherished, and multiplied. See what it is now proposing to accomplish, to connect the golden State of California with the Empire State, San Francisco with New York, the Atlantic with the Pacific. Shakespeare's words will soon be almost a reality: "I'll put a girdle round the earth in forty minutes." The gentleman from Onondaga [Mr. Alvord], in his remarks a few days since, drew a beautiful picture of the benefits conferred by the canal boat floating over our canals, carrying the necessities of life to the dwellers upon its banks, and transporting the produce of their farms to our commercial metropolis. I have no desire to detract from the beauty of that picture. But is it not equally beautiful when the canals are locked in the icy grasp of winter to see the iron horse bounding over hill and valley and prairie and river, while the ground trembles beneath his tread, carrying the products, and luxuries of the West to the commercial metropolis of this land? I am unwilling to do anything which may tend to interfere with this intercourse between the East and West; and the effect of the proposed amendment could not be to assist, and might be to interfere injuriously in the extreme, with this great, this beneficial interest, which is so essential to this intercourse and to interrupt its complete development. The gentleman from Genesee [Mr. Wakeman], in some remarks which he submitted on Saturday morning upon this subject, spoke with reference to the consolidation of the Central railroad, and the attempts which had been subsequently made to induce the Legislature to change the rate of fare which had been stipulated to be charged for the carrying of passengers, provided that consolidation took effect. His argument seemed to me to arraign the Legislature more than the railroad, and to put that body upon trial instead of discussing the propriety of the measure which was under consideration. He claimed that if such combinations are allowed to be made; if railroad companies are to be permitted to consolidate and exercise such a power, we must bid farewell to the liberties of this State. I am not willing to indulge in any such disastrous anticipations. I repose greater faith, and greater confidence in the people than to believe that any consolidation of railroad companies will be sufficient to overcome their liberties. I believe the rights of the people of this State are based upon their intelligence, upon their capacity for self-government, and that they will maintain those rights, and that liberty will be preserved, notwithstanding every railroad company in this State might be consolidated and framed into one gigantic corporation. But that gentleman conceded the whole argument in the admission which he made in the course of his remarks when he said that if this amendment is to be in any manner injurious to New York city we ought to pause. That, sir, admits the whole argument. If it should be any injury to New York city, his language is, we ought to pause. And whatever is an injury, in this respect, to New York city, I consider to be an injury to the whole

State. That city is the great commercial metropolis, not only of this State, but of this continent; and we are hoping for and urging on the day when she may become the commercial metropolis of the world. I believe we ought to stop and pause if this measure is to be at all disastrous to that great city. And how can it be otherwise? The gentleman from Genesee declares that the prosperity of New York city depends upon competing lines, not upon consolidated ones; and yet this provision might preclude connections on lines of competing roads, and thus render continuous transit through the whole length of those lines impossible, or, at least, difficult; and then, most assuredly, it could operate no otherwise than disastrously, as far as the interests of that city and of this State would be concerned. My colleague [Mr. Gould], in the remarks which he made alluded to the diverting of the tea trade from Boston, because a small tax was placed upon it in that port, or because there was a small difference in the expense of transit in favor of the city of New York. It seems to me that his statement was an argument against the position which he was attempting to fortify. It shows that circumstances could and did divert a certain trade from the city of Boston. I ask him if circumstances of a similar kind might not be able to divert trade from New York in favor of other cities and other States which are making every effort to effect such a result, to obtain and monopolize that trade and grasp it themselves. But, it is said, that the course of the railroads of Pennsylvania is over the Alleghany mountains, and that this obstacle interposed by nature must render them unable to compete with roads whose termini are in the city of New York. This may be true at the present time, but there is no assurance that it will so continue. Cannot science surmount even that obstacle? What has not science surmounted? See what it has already accomplished in the Sierra Nevada, and what it is constantly effecting along the line of the Central Pacific railroad. See what was proposed to be done in British America, at the time when the integrity of our Union was threatened and when it was anticipated in foreign countries the destruction of our government was almost inevitable. Why, a railroad was projected commencing at Ottawa, in Canada, terminating at the Pacific and running its whole distance on British soil; and, although the capital required for that road would have been one hundred millions of pounds; though it was estimated that it would require thirty years to accomplish its construction, and though, for many months, it would be necessary constantly, in almost inaccessible fastnesses, to uncover the iron rail from snow and ice that was accumulating upon it, still that project was seriously considered. British engineers and British surveyors went through that cold region and over the proposed route, and pronounced it to be feasible. Who is prepared to say that, if this Union had been destroyed, and thus our own great Pacific railway had not been carried into actual operation, the plan of constructing a railroad throughout the length and breadth of the province of Canada would not have been carried into effect, notwithstanding all the obstacles to be sur-

mounted and all the difficulties interposed to its success. In this century and age impossibilities are annihilated. Whatever commerce and the demands of civilization and progress require will be effected; and on this very account it becomes us carefully to guard and foster those facilities and enterprises which we now possess or are under our control, in order that the supremacy of our State and great metropolitan city may be preserved. My colleague also alluded to the fact, upon which the gentleman from Westchester [Mr. Greeley] has just spoken, of the influence which railroad companies exercise. He stated that at every election they had their depot masters, station agents and track masters at the polls among the electors, and that they exerted their power in endeavoring to influence citizens and control their votes. Now, sir, I beg leave to inquire if it would not be extremely dangerous for this Convention to frame a Constitution to be submitted to the electors of the State, and which we desire them to approve, containing a section calculated to array against the whole instrument an influence which my colleague pronounces to be so powerful, and which he claims is exercised so constantly. But, as far as I have any experience in regard to the administration of the railroads which run through the district in which I have the honor to reside, since those railroads have been under their present management and direction, they have been operated not for political purposes, but for the benefit of the stockholders, and the agents or officers have not mingled at all in political contests further than to exercise their rights as voters and citizens in accordance with their own views, and, as far as I have had any intercourse with them or knowledge of their conduct, they have expressed those views entirely uninfluenced, and as their own opinions directed and indicated. But, if any action is to be taken with respect to this subject, the Legislature of the State is the proper place where this question should be discussed, and where any provision that is essential to the protection of the people of the State should be enacted. The members of that body have the time to devote to its proper consideration; we have not; they can consider all the details; we cannot; they can see what the necessities and wants of the people require in this respect, and what it is advisable to do in order to protect stockholders in corporations and the interests of the State against the power of these corporations; we have not that time. We are to frame a Constitution which is to be the great fundamental law of the State, and the Legislature is to carry into effect the details which are necessary, and which may be required. It seems to me that we are prone to assume and usurp too much of the position of legislators instead of being merely framers of the Constitution. I am aware of the argument which will be urged against this suggestion. It has already been frequently elaborated in this hall. I have heard several gentlemen state that they were willing to trust as little as possible to the Legislature. I know that the public press has teemed with denunciations of the Legislature of this State. But we must place confidence somewhere, or

else government cannot be conducted; and why not, in this respect, in the men who represent the people? They are our neighbors, our fellow-citizens; they are men whom we select to represent us. We must place some confidence in them with respect to some subjects, or else the whole structure of government is destroyed. Want of confidence in any project is an almost certain indication that it will not succeed. In commercial circles it brings on stagnation, revulsion and ruin. If we are not willing to trust something to the Legislature of this State, and be willing to believe that in some respects at least they can act wisely and intelligently, then there is more reason to fear that our liberties are endangered than they can be by railroad combinations. I do not think the argument which has been urged with respect to the power which railroads exercise in the States of New Jersey and Pennsylvania has any applicability to this State. New Jersey is much smaller than the State of New York; much more susceptible to the influences by means of which it is alleged that such corporations exert their power, while her great railroad is an actual monopoly and excludes all competition. As far as Pennsylvania is concerned, the gentleman from Onondaga [Mr. Alvord] has stated in part the reason why she is under the control of her railroads; she has parted entirely with her canals. But I cannot gain from a single report which has been submitted that there is any intention that our canals are ever to be leased or sold, consequently they will remain a check upon the railroad corporations of this State. I am in favor of sustaining, supporting and protecting every interest which tends to develop the State and make it the highway over which the products of the great West shall pass to the sea-board, and thus preserve the supremacy of our commercial emporium and of the Empire State. I believe that consolidation is often requisite in order that the full benefits of railroad facilities may be obtained, and, therefore, I consider that a constitutional restriction thereupon would operate disastrously to commerce, disastrously to the interests of the city of New York and consequently to those of the whole commonwealth. I realize the fact that a great struggle is going on to divert commerce and traffic from this State. I realize that the British provinces, Philadelphia and Baltimore are all contending and striving to gain the trade of the West, and divert it from its natural channel through the State of New York. I am not willing that that enterprise and attempt shall succeed. I desire that the State of New York shall retain this great trade and source of wealth and power which are naturally hers; that she shall remain the Empire State, and that the city of New York shall remain the empire city—the commercial metropolis of this land. To me it will be a beautiful, a sublime sight, when over Sierra Nevada, through Great Salt Lake, Laramie Plains, Omaha and Chicago, along the Lake shore, Central and Hudson or Harlem, one continuous line of iron rail stretching from San Francisco to New York shall connect in an indissoluble bond of friendship, intercourse, and interest, the East and the West. But to effect this we must leave commerce unrestricted, and capital and enterprise must be

regulated by the wants and exigencies of the community, as they are constantly developing themselves, and not by any arbitrary law. Early in the history of this Convention, when the subject was under discussion whether a separate committee should be appointed upon the canals, the gentleman from Oneida [Mr. T. W. Dwight], in a very eloquent speech which he made upon that question, said:

"I learn that there is a prospect of this great trade—referring to the trade of the West—going in part through other States, and perhaps going out through the St. Lawrence. I want to hear this question discussed here and examined upon its merits, not subordinate to the question of finance, but upon the great question of the empire, strength and extent of the State of New York. Moreover, sir, I want to see this question also examined as a matter of nationality. We are placed by Providence directly in the path of those Western States to the sea. We hold the key of the gate of commerce; they cannot get out except they pass over the territory of the State of New York. I think, therefore, as a great national question, it is of importance to us, situated as we are and holding this position in reference to those other States, that we should furnish them the facilities for going to the sea; they cannot furnish it by themselves; they cannot pass over the State of New York; they say, 'we would like to open this great pathway for ourselves, if we had the opportunity, but it cannot be afforded to us; that would be trenching upon the sovereignty of the State of New York.' Sir, shall we sit supinely and say that these men shall be driven to go out of the avenues of the St. Lawrence and be exposed to the dangers of the Bay of Fundy, and that we will furnish them no means by which they shall have a free and open pathway to the sea?"

I renew these questions here and now to this Convention. Shall we, by the restrictions which we are asked to place upon capital; by the embarrassments which we are desired to throw around its exercise; by the limits which we are urged to assign to enterprise; by the discrimination which we are virtually invited to proclaim against the exertions and capital of our own State, assist Canada, Philadelphia and Baltimore in this struggle for supremacy, reject all these vast advantages which we possess, and aid in diverting this great and splendid commerce which will render secure the position of our own imperial city as the commercial metropolis of the western world?

Mr. A. J. PARKER—If there is no one else who desires to speak, I will occupy the time of the committee for a brief period, in answer to what gentlemen have said in opposition to the amendment I had the honor to offer. I agree with the general principles of the amendment that is offered by the gentleman from Niagara [Mr. Flagler]. There should be some guard in making consolidations of railroads that will protect the shareholders; and although my amendment only protects them incidentally, it certainly, to some extent, does so. I should be entirely willing to go further with the gentleman from Niagara, on some other occasion, to provide more guards, with a view to protect them. But the

principal object of my amendment is to protect the public, to protect the Legislature in its reputation, in its character, in its virtue, because our experience has proved, beyond contradiction, that the Legislature cannot withstand these attacks upon the individual virtue of its members by the railroad corporations of the State. While we are seeking to purify the State and remove causes of corruption, we can do no better, in any remedy that we can prescribe, than to remove the temptation that has notoriously, heretofore, led the Legislature astray. Is there any one here who believes that there would be any difficulty at all in getting an act of consolidation passed by the Legislature of this State with one million in hand to effect it? Is there any one who doubts that it could be accomplished with one-half or one-quarter of that sum, and that too without yielding to that forbidding and repulsive doctrine, once proclaimed on the other side of the Atlantic, that "every man has his price"—a doctrine to which I do not, by any means, subscribe. But it is said (and I am bound to answer that objection, coming as it does from reputable members of this Convention) that this subject does not belong to the Convention. It is certainly a very strange argument to make. Pray, why are we here to make this Constitution? What is our object and our duty? It is not only to distribute the powers of government between the executive, the legislative and the judicial branches, but more than that, and, perhaps, more important than all, to limit and restrain those powers—to mark them by definite and plain boundaries, and keep each one within its own limit. And it is just that I propose to do by this amendment. I propose to fix some sum—if fifteen millions be too little, make it twenty, or even more—but I propose to name some sum as the limit beyond which the Legislature shall not go in these irresistible applications made to them to effect a consolidation. I do insist that there is no plainer duty that devolves upon us as framers of this Constitution than to prescribe a limit upon that power, and more especially to prescribe that limit, when it is notorious (and no man who looks at this Constitution hereafter, when we submit it to the people, will deny it is notorious) that this precise cause has produced more corruption and more bribery in the Legislature than any other. But I am a little surprised at the argument of the distinguished delegate from Westchester [Mr. Greeley] this evening. I had hoped to have had his support upon this proposition. I believed, from his character and habit of thought, from his sincere desire to purify legislation, that I should have his support. I regret he has been absent heretofore in this discussion. I do think he has given too little consideration to the real question. What does he say? Why, among other things, he says, "If this be adopted it will produce some thousands of votes among the people against the ratification and adoption of this Constitution." Now, it seems to me that that argument belongs entirely to the other side. What is it that the people expect from us? I say that, first and foremost, they expect from us a Constitution that will prevent the frauds that have been practiced. When I am around

among the people and hear them talking upon this subject, it is the very first thing they say: "Give us a Constitution that will restrain the Legislature within honest boundaries." "Prescribe means to prevent corruption at the polls." Corruption is the great evil they hope to cure in this new Constitution. But I tell the delegate from Westchester, if we lay before the people a Constitution that does not even pretend to limit or prevent abuse, it will be rejected with scorn, and instead of losing thousands of votes by inserting it, I tell that gentleman there will be thousands lost if this amendment is voted down. The people will say: "What have you done? You have restrained nothing; you have limited nothing. We are still in the hands of the Legislature, or rather of those men who, as experience shows, corrupt the Legislature. Your Constitution is worthless—it is no reform." Therefore they will, as they ought, perhaps, defeat it. But it is said that if this amendment is adopted, if the consolidation of railroads is prevented, the city of New York is to be injured. Do not delegates here see that without the consolidation of one single railroad terminating at the city of New York, that city has grown to such proportions that its population cannot be covered by the tenements within it? Pray, how can consolidation aid, in any respect, the city of New York? What more does she need, or can she need, than she has now—now, when from every direction in the East and the North and the West these roads lead directly there, pouring their wealth into her lap? They lead to her without consolidation; they reach to her by continuous lines of different railroads extending from New York to the far West, needing no consolidation to secure her people the advantage of the rapid transmission of passengers and property. The common interest of the roads that make up the continuous line is all that is needed to carry there with the greatest possible rapidity, both passengers and property. Without consolidation you buy a ticket at the city of New York for St. Louis, or any other of the cities of the far West. You put your freight in the car which is to go through without breaking bulk to any point you please. No consolidation does this. Can consolidation do more? I have not yet heard one single reason given to show that consolidation could do more. Not one point is mentioned, not one fact stated, nothing from which we can suppose for one moment that New York could be benefited by a consolidation of the lines, so long as we know perfectly well that the mere continuity of lines, that an interest that prompts each line to act in connection with its neighbor, brings people there as rapidly as if they were consolidated. Do not let us talk, therefore, about injuring the city of New York. That is the old cry that is always raised upon such occasions. Do not let us forget that when these roads are built they are built to lead to the great commercial emporium. It is because the city is a great commercial emporium that roads lead to it. That is the object. Roads would not be built except for the fact that they lead to the point upon the seaboard best for the delivery of produce, best for commerce, the great point and center of com-

merce itself. Men do not build railroads except for purposes of gain, and therefore it is that these lines radiate from the city of New York in every direction. Therefore it is we have a center there, because that is the point where it is the most profitable to deliver articles that enter into the commerce of the world. True, there is an incidental advantage in the construction of these roads to the country; they develop the resources of the country; they add to its wealth. All this wealth again adds to that of the city. You cannot stop the prosperity of the great city of New York. Nay, though I believe consolidation will injure it, it cannot stop it. Its location, more than all other things, gives it an advantage that no combination of railroads in any other direction can overcome. Now, while we are talking so much about the city of New York are we to forget the interests of the whole State—the interests of the people? Are we to forget that if you impoverish the country you lessen the resources of the city also? You cannot sever those interests. If the city of New York is the great heart and center of the commercial body, these limbs which spread out in each direction, cannot be severed without sapping its strength, and perhaps taking life. These streams of commerce that run into this central heart like the veins of the system, we must remember, are counterbalanced by corresponding arterial returns of commerce to the country itself. You cannot sever a limb at any point without affecting the vitality of the whole system. And yet this great cry of injuring the city of New York is raised here in the hope of drawing off from this proposition the support of certain delegates here from that city. They may, perhaps, be led into that great error. Some have been thus misled; others, thank God, have not. But I think the time will come when those who oppose this measure will admit that they committed a great error, and when it will be too late to recede. I believe that the consolidation of these roads would injure the city of New York. If you place such vast interests in the hands of one man, he holds them, not for the benefit of the State or of the country, but for the benefit of his own great purse. I believe, when he takes that into Wall street, and speculates there, and accumulates millions, he adds nothing to the wealth of the State. It is only to his own purse that he adds. Every dollar he puts in there by stock speculation is taken from some other quarter. What is made to him is lost to others. The gentleman from New York [Mr. Schell], who opposes the measure, my esteemed friend, in whose judgment in most matters I should have great confidence (though I have very little in this, for reasons I shall give by and by), avowed openly, as I understand, upon this floor, that there ought to be a consolidation of the Hudson River and Central roads. Let us look for a moment at that proposition.

Mr. SCHELL—I do not think I have made any avowal of that sort on this floor. I only pointed out some of its advantages.

Mr. A. J. PARKER—Then I will modify what I said in this respect. I will say that the gentleman made remarks which will go to justify such

the consolidation, an argument in favor of it. So far I am right. Now let us look at it for a moment and see what would be the effect upon the city of New York, upon the people of this State, of the consolidation of these two roads the Hudson River and the Central. The gentleman from Schenectady [Mr. Paige] in a very clear and able argument in this committee on Saturday showed how great would be the loss to the forwarder and those interested in transportation, to have such a consolidation, inasmuch as it would destroy the competition that has always existed between the river and the roads upon the east side of it.

Mr. SCHELL—Will the gentleman allow me to ask him whether he does not know that freight billed at Buffalo for New York if it goes from Albany by boat is charged the same as though it went by rail and that there is no advantage gained to the consumer or freighter?

Mr. A. J. PARKER—I do not know what freight is charged now, or what is the relative freight between the Hudson River railroad and the river. But I do know what freights were charged last winter on the Hudson River road. I shall have occasion to refer to them before I get through. I was alluding to the fact that the delegate from Schenectady [Mr. Paige], on Saturday, showed conclusively the great loss the forwarders and owners of produce would sustain by destroying competition with the river. Now, we see upon every side how great would be the injury to the State if there should be a consolidation of the Hudson River and Central roads. It would be equally as disastrous to the canal interest as to the river interest. It would take away the chances of competition between the canal and the Central road in transporting property between Albany and Buffalo. It would have precisely the same effect at the west as at the east end of the line. If you consolidate these two roads, and place them under one head and one will, it would hardly be possible that freight starting from the city of New York should be transhipped at Albany to the canal, and pass over that to Buffalo, paying to the State tolls and yielding to the people other incidental benefits. The combination of these two roads would take away from the State all that is now left to it by the competition of its own canals with the Central road. There has been much said about the consolidation that has already taken place, uniting the shorter roads between Albany and Buffalo—

Mr. SCHELL—I ask the gentleman if there is any objection to the competition of a railroad with a canal, with the view to reduce the prices of transportation from Buffalo to New York?

Mr. A. J. PARKER—Certainly; no objection to such competition, but a very great objection that such competition will be destroyed in case of consolidation of these roads, because if goods start from New York in a continuous line through, the railroad can make such terms as shall render it utterly impossible that the canals shall have any fair chance to compete or the people any benefit of competition from Albany to Buffalo. Now, I hope the gentleman will allow me to proceed with my argument. I was going on to say that thus far the only consolidation that has ever

taken place in this State was of roads which in the aggregate are just the length of the canal itself. I say to the gentlemen of this committee that is quite as much as this State can afford to surrender. We have seen the effects of that consolidation upon the commerce and revenues of the canals. I ask you if the canal interest can stand up for one moment against a further consolidation that shall extend one hundred and fifty miles beyond its present eastern terminus—a monopoly controlling entirely the transportation of freight through the whole distance from New York to Buffalo? I call the attention of gentlemen of this committee to this startling fact, and, if they consider it properly, I am sure they will be the last to give to the Legislature the power to surrender up the advantages the State and the people should derive from the canal and its branches extending to different parts of the State. But it is said these railroads now can unite, run in connection, and sell tickets and send their freight cars all the way through. It is very true. I am glad they do so. It is for the convenience of the public. It is all that can be done to accommodate the public, and it is all the public require. Why, therefore, consolidate? Why not leave these different companies in the hands of the different boards of directors and each responsible to its own stockholders to run for their own separate interest? Why not keep them separate corporations, responsible as such to the public and to their owners? Why put them together if no public good is to be accomplished by it? Why allow them to be consolidated and place the whole under the will of one man? Is it not contrary to all our past experience to suppose the public can be benefited by great monopolies of that description? Has it not become an accepted democratic doctrine (and I use that word in no partisan sense) that great monopolies are not to be encouraged, and more especially where the public can have all the commercial advantages they seek without them? Why, then, permit the Legislature to take a step of such hazard and danger—the hazard of placing the whole railroad interests in the State in the hands of one rich man, when it is evident that the public interests are not to be promoted by doing it? Again, it is said if this amendment is adopted, it does not prevent your forming new railroad corporations to any extent and with any amount of capital. I admit it; it does not; I do not seek to prevent anything of that kind. I should be glad if, within one year from this time, a new railroad should be built by a new company, which should extend its track all the way from Buffalo to New York. It could not be consolidated with any other, if this amendment shall be adopted, and it would create new and additional competition, and would thus be a benefit to the people of the State. I should be glad to see new railroads built. I do not care how long the roads or how great the capital employed, because every one would at once become a competing road, and would tend to reduce the price of transportation between the city and the country. I do not seek to check at all enterprises of that kind, but would encourage them. I only ask that this amendment be adopted that the Legislature shall not turn what is a blessing into

a curse, by allowing great companies, when once formed, to consolidate and place the whole under one great monopoly, at the will and beck of one man. I say, unless this amendment is adopted, if this consolidation that I apprehend is effected, farewell to all hope of any more of these enterprises in the interior of the State. You may give up all hope of the Midland railroad from Oswego to New York, if once a consolidation is formed between the Hudson River and Central railroads. You may give up all hope of your river road upon the western side of the river in such an event. It is out of the question. No man would hazard his money in an enterprise like that, with such hopeless opposition as it would promise to the great monopoly I deprecate. If you prevent this monopoly, there is then this chance of competition, and you encourage these other works.

Mr. SCHELL—Will the gentleman allow me to ask him a question? Does he not know that there is a law on the statute book which requires connecting roads to make such arrangements as may be required to accommodate the business of each road, and if there should be a consolidation between the New York Central and the Hudson River railroad franchises, and a road should be constructed on the west side of the river, that it would have every accommodation for the transaction of its business with the New York Central road, as though there was no consolidation?

Mr. A. J. PARKER—Certainly; and is not that enough? What more do the public interests demand? That is fixed now, that secures continuity, it secures every possible advantage to the public and yet keeps these corporations separate, under separate directors, with separate organizations and separate interests. What more can be desired or demanded? I thank the gentleman for the suggestion. It is a strong argument against the position he takes here.

Mr. SCHELL—The gentleman will recollect that he just declared against consolidation because there would be no competition.

Mr. A. J. PARKER—Consolidation is one thing; running in connection is another. The gentleman has spoken of running these roads together for the mutual advantages they afford each other. That is right; that is proper. Their own interests demand it, and these interests accord with the public wants. But consolidation is a very different matter. Consolidation unites these companies as one corporation; consolidation strikes out from these companies all except one board of directors, and if that board of directors be in the hands of one rich man of sufficient millions to control the stock market, it becomes his means of adding many more millions to his wealth. I should like to have my friends in the counties on the east bank of the river see how they will fare under a system of consolidation. I think my young friend from Columbia [Mr. Silvester] has made a sad mistake in the position he has taken this evening. The people of the counties along the east side of the river—Rensselaer, Dutchess, Columbia, Putnam and Westchester—have had some reason to know what charges are made for way freight in going through: they have had some reason to know and to feel what that monopoly, even to the extent to which it now ex-

ists, can do in subjecting to unjust and unequal charges. Last winter, when the river was closed and there was no competition with the Hudson River railroad by river, that road charged ten dollars a ton for freight between Albany and New York, a greater charge than is made for freight carried the entire distance from New York to Buffalo, and those along the route must submit to these exactions. And if you increase the power of the monopoly that makes them, you will only subject yourself to greater demands and become more helpless. But, Mr. Chairman and gentlemen of the committee, I have thus far spoken of the evils that would grow out of a consolidation between the Hudson River and Central railroads alone. We must not forget that the Hudson River and Harlem railroads are controlled and moved by one man, and are now, even without consolidation, directed by one will. There is no competition between them, though they should be competing roads. But, sir, there is a danger vastly greater than those I have alluded to which stares us in the face, and we may as well look at it squarely and act with reference to it. I allude to the probable consolidation of the Erie, the New York Central, and the Harlem and Hudson River railroad companies into one corporation. I know it has been said that this is not contemplated. I will show that it is contemplated, and I insist that when we meet to frame a Constitution to protect the people against exactions and against corruption, and to secure to them all their rights as far as possible, we should do it by looking fairly at the facts that surround us. A very different state of facts exists now from that which existed twenty years ago, and we should legislate with reference to existing circumstances. If there be at this moment a great, impending danger hanging over us, and we see it and have no doubt of it, we should be false to the people we represent and false to the oaths we have taken if we fail to guard against it as far as we can in the Constitution we make. I charge here that there is a project now on foot to consolidate the Central and the Erie railroads, as well as the Hudson River and Harlem, and, if not arrested, time will show it, and many of you live to see it. If it is not prevented by the restrictions you put in this Constitution, it will be done, and that quickly. And here I must make a correction, which is due to myself and others upon this floor. It may as well be done here. I saw in the *New York Evening Express* of Saturday a statement in these words, under the editorial head, after quoting the amendment I have proposed:

"The meaning of this contest is between the Vanderbilt and Corning interests in the New York Central railroad. It is a purpose to prevent Vanderbilt from getting control of the New York Central, and constituting it with the Hudson River railway one company from New York to Buffalo."

Now, this comes from an editor who was heard on this floor—an able and eloquent man—in opposition to the amendment I proposed, and I ought here to say that, supposing he knows, as he speaks on that side of the question, that the Vanderbilt interest is engaged in trying to get the control of the New York Central road, I shall

take that as his admission and use it. But I take this occasion to deny expressly that this amendment is offered in the "Corning interest," with the view of getting control of the Central railroad. A greater misapprehension could not exist, for the fact is entirely otherwise. The gentleman referred to, Mr. Corning, retired some years ago from the head of this Central railroad, and most reluctantly consented to serve as a director during the present year. He seeks no control of this road; he would not take it if laid at his feet, under any circumstances. He feels that he has fully discharged his duty in regard to enterprises of that kind, and there is no truth whatever in the statement that there is any struggle on his part or that of his friends to retain or regain the control of the Central railroad. For myself, sir, I am neither stockholder, director nor counsel for any railroad in the State of New York, and it is an entire misapprehension, and it is most unjust to those of us who press this restriction, to say that we have any motive under Heaven, except a faithful discharge of public duty to the people of the State, in resisting a great and threatening evil. Now, it is said here that Mr. Vanderbilt is struggling for the control of the Central railroad. In discussing questions of this nature, and acting upon them, we have a right to avail ourselves of what is notorious, and we would be false to our duties to those we represent if we did not avail ourselves of information of that kind. No one will deny that he controls the Harlem and Hudson River railroads. His vast fortune of many millions enables him to do so and much more. No one can deny but that he has struggled and is struggling for the control of the Central railroad; but there is no "Corning interest" struggling against him, and none sought to be established. I now aver that he is not only struggling for the control of the Central railroad, with a view to make that a part of his plan of consolidation, but he is at this very moment laboring to get the control of the Erie railroad, and will have it. Do not we all know perfectly well that my esteemed friend from New York [Mr. Schell], who appears as the principal opponent of my amendment, is one of the directors of the Hudson River railroad, and is intimate in his relations with Mr. Vanderbilt in all these great movements? This fact is as notorious as that this Convention is in session; and I now propose to show that at this very moment those gentlemen are seeking to get the control of the Erie railroad company, of which the election of directors is soon to take place. I will read the notice which I cut from the New York *Tribune*—always good authority,—and which you will also find published in the *Times* and other papers:

"New York, July 25, 1867.—Stockholders in the Erie railroad company who favor such a change in the administration as may secure to the owners of the property some regular income out of its very large present and prospective earnings, are requested to send their proxies to one of the undersigned: Work, Davis & Barton, D. P. Morgan, Augustus Schell."

Mr. SCHELL—I ask that I be heard one moment, that my denial may be as prompt as the avowment is unjust, that I am connected either

directly or indirectly with Mr. Vanderbilt in seeking to get the control of the New York Central road, or that I know that he is engaged in trying to get the control of the Central road, or that he has an interest directly or indirectly in the matter of procuring proxies in connection with the election of directors of the Erie road, or has any part or lot in it in any way.

Mr. A. J. PARKER—Time will develop all these things, Mr. Chairman, even if it is possible to question them. Is it not true that my friend is intimately associated with that great millionaire who now seeks to wield the destinies of the railroad interest on this continent? I have answered all his questions, now let me catechise him a little.

Mr. SCHELL—Mr. Chairman—

Mr. S. TOWNSEND—I rise to a question of order. I say that the great interests of four million of the people of this State, which I in part have the honor to represent, are prejudiced by these Wall street bickerings, these Wall street catechisms, and these Wall street expositions. What have we to do with that? Why, we have lying on our tables three reports of the Committee on the Finances of the State, showing that the taxes of our people will be \$185,000,000 a year. What have we to do with Wall street—"buyer 60" or "seller 90"—"short" or "long"? [Laughter].

The CHAIRMAN—Will the gentleman state his point or order?

Mr. S. TOWNSEND—I have stated it, sir. The contest between Wall street gentlemen, some of whom are sitting on this floor, we have nothing to do with. We have other interests more important than them.

Mr. A. J. PARKER—I think we must all agree that this point of order is remarkably well taken. [Laughter.] I do not believe much in the propriety of asking questions where gentlemen are engaged in discussion, and I have not practiced it myself; but I would like very much to put a few questions to my honorable friend [Mr. Schell], in return for those he has put to me. I would like to ask him if he is not a director of the Hudson River railroad?

Mr. S. TOWNSEND—He is supposed to be. [Laughter.]

Mr. A. J. PARKER—I ask the gentleman on this side.

Mr. SCHELL—I am a director according to the public records.

Mr. A. J. PARKER—Did not the gentleman [Mr. Schell] authorize his signature to this advertisement which I have read?

Mr. SCHELL—Certainly I did.

The CHAIRMAN—The gentleman is not obliged to answer questions unless he wishes.

Mr. A. J. PARKER—That is his constitutional privilege, of course. A man is not bound to criminate himself. [Laughter.] Here is an advertisement thrown out broadcast over the land, asking men to send their proxies to my friend from New York [Mr. Schell]. What am I to understand? Is not the Hudson river a competing line, competing with the Erie? and yet it is said there is no intention of bringing together competing lines and consolidating them. It is an invitation to the stockholders of the Erie to give

them the control of the Erie, as they have already of the Hudson River, the Harlem, and much of the Central, and, I believe, of the Cleveland and Toledo railroad. It is an invitation that perhaps may be accepted. "Come, walk into my parlor," say the directors of the Hudson River to the stockholders of the Erie, and perhaps they will walk in and be caught in that web. Sir, if a man of thirty millions of wealth aspires to the consolidation and control of all the great railroad interests of this country he can accomplish it unless restrained by constitutional prohibition. There is no Legislature in the world that can withstand such power. Everybody knows that if this consolidation is accomplished it is ten millions more instantly in the pocket of that great millionaire. He seeks to control railroads, not to build them; and I do not know that he has expended the first hundred thousand dollars in building a railroad and developing resources and benefiting the country. No, no; it is Wall street he selects for his field of action. He buys and grasps, holds and consolidates, to wield the power that money gives, and that I regret is so irresistible. Now it is undoubtedly, as a general rule, a great misfortune to see such a great accumulation of wealth in one man. But if it be the result of enterprise or skill, or even of successful speculation in Wall street, the law does not interfere with it. Great wealth may be a great blessing as in the case of Peabody, who uses his money to build houses to cover the poor, to instruct the ignorant and relieve the oppressed, and a great blessing it is acknowledged to be the world over, for which we should be devoutly thankful to God as well as grateful to man. And great wealth brings a blessing also, even with less philanthropy, when it builds up cities, constructs railways, develops resources, enters into and encourages and improves the industry of the land; then too we get blessings through it, though it be held by one man. But if these millions are concentrated in the hands of one man, with no such feeling and no such tendency—who seeks to gain millions more without giving any employment to human industry, who builds nothing, but who goes into Wall street to buy up and consolidate, and wield a power such as no monarch on earth wields, all this is against the interests of the country and against the interests of the city, and is an unmitigated curse. My friend from Rensselaer [Mr. Seymour], hardly ever in his life wrong, and whose integrity no man ever questioned, is wrong here in the course he takes; wrong in opposing this restriction as a great public measure, and wrong as regards the interests of his constituents. Let this consolidation be effected even between the Hudson River and Harlem railroads on the one hand, and the Central on the other, bound together as these roads are by this bridge, like the umbilical cord that binds together the Siamese Twins, making each inseparably necessary to the vitality of the other, does he suppose, after consolidation, that one ton of freight or anything else, would ever go through Troy so long as that bridge shall pay ten cents more for every passenger carried over it, and a large additional charge for freight? He may bid good-bye to any hope of improvement to his flourishing city if this

thing be accomplished. We ought all of us to be aware of the danger of the power where these vast sums are handled by a few. Have we forgotten the transactions of the last winter? I have not yet read the statutes passed at the last session of the Legislature, for they are not yet published, but I am told that an act was passed authorizing railroads where they held another railroad under a lease, to buy it up and consolidate it; and although that bill, I understand, was introduced with reference to some northern road, where it would have been perfectly proper, and although originally that bill excluded the New York Central railroad from its operation, yet when it got through the Senate and obtained the signature of the Governor, that restriction had been stricken out. And what was the consequence? Why, with the suddenness almost of lightning, before the public had any premonition, it was announced that the directors of the Central railroad had purchased that branch that runs from Schenectady to Athens. It was held under a lease before at six per cent; they became the owners at two millions, and five or six gentlemen—I believe that millionaire I have spoken of was owner to the extent of half a million in it—received pay for that branch for a bad investment in two millions of New York Central stock. If this consolidation be effected, let me ask my friends from Greene [Mr. Mattice and Mr. More], who must feel some interest in that road, and all who live on the river, what more will ever be done in sending a ton of freight to Athens? There is no obligation to run cars to Athens, and consolidation will make it the interest of the company to run all the cars to Albany and thence by the Hudson River railroad to New York. You have now absorbed the Athens route in the Central railroad, and when that is consolidated with the Hudson River you may as well take up the rails that run to Athens. Why, this only shows how the public are never benefited by these Wall street operations. What care the stock gamblers of Wall street for the interests of the country through which a railroad runs? Your railroads should be held only for the purpose of the public good, developing the resources, and adding to the wealth of the country, as well as securing a fair return to the stockholders. It is indeed unfortunate that there are men in the land of such vast wealth that they can monopolize and control our railroads in Wall street. Railroads cease to be, to a great extent, under such circumstances a benefit to the public. In such hands they are not managed for the public good; they are only managed to make the rich richer and the poor poorer. But I may be taking up too much of the time of the committee. I deemed it my duty to state some of these objections, and to lay them before the committee. I have no more interest in the question than any other citizen of the State who desires a good government, and a restrictive Constitution, which will restrain the corruptions that have been practiced by these companies upon the Legislature. I am one of those who believe we can make a good Constitution, that will be approved by the people. I believe if I could have the aid on a subject like this of the gentleman from Westchester [Mr.

Greeley], and a few others, I could have secured the adoption of this amendment. I hope to do so without their aid. Depend upon it, however, unless you present a better Constitution than we have now, unless you do in some mode attempt to restrict or root out corruption from the Legislature, and unless the people can see it in the instrument you submit, they will scorn and reject it. I am one of those who believe that if you confine the Legislature to the passing of general laws, if you limit them in this matter of railroad consolidation, you will take away nine-tenths of the temptation that is laid in their way annually. Does not everybody know that the great sums of money that are spent in lobbying and corruption come from these great corporations? They have the wealth and the means; they don't mind paying a million, and for such an object as this they could afford to pay five millions, and even then they would pocket five millions of profit. I trust the committee will carefully consider this matter, and if they then reject it, I shall feel, at least, the satisfaction of knowing that I have done my duty, and others must take the consequences of their own votes.

MR. S. TOWNSEND—I concur with the last observation of the gentleman who has just taken his seat [Mr. A. J. Parker], that one of our objects is to endeavor, as far as possible, to protect the people of the State against corruption in the Legislature of the State of New York. But, sir, it strikes me that in view of the discussion that we have had drawn out here for a period of over three days, in regard to the danger that we are to expect at some remote period during the next twenty years, of a great anaconda or boa constrictor operation [laughter] in the shape of a railroad consolidation, that will wind itself around the people of this State, the best thing we can do, if the majority believe that the report of the committee is not properly drawn, is to take up again the article which we have laid aside partially completed, in reference to the organization of the Legislature, and see if we cannot secure, by the terms of that article, the certainty of having a class of legislators who will rise superior to these railroad interests of Wall street; who believe that character is far above money in every respect; who estimate honor far above thousands of millions. I think that the proposition to confine legislation to the lower branch, and to make the Senate a small revisory body and give them a large salary, electing them for eight years, one in each judicial district, demands serious consideration. I think you will elect by that means men who are irreproachable, and who will put a preliminary veto upon any such proposition, as is supposed, before it goes beyond them. I believe we have made a large advance in what we have already done in securing to the people of the State a better legislative body than we have had heretofore. I think the proposition in favor of general laws would do a great deal of good, and that the statute books of the State, in that event, would not be so encumbered with laws, few of which we are able to read before they are changed again. We have been continually taking up matters of special legislation where we should generalize and should confine our legislation to

the organic formations, so to speak, of the various bodies in the State that are hereafter to make and carry out our laws. I have listened with great satisfaction—as well I might, having lived, as man and boy, for more than forty years in the city of New York—to the true pictures which have been drawn of the commercial advantages of that city—far beyond any control of canals or railroads. Then, again, as has been said, a railroad leading to Boston, Portland or Philadelphia, or to any sea-board city, can be and is readily tapped at some convenient point, and as much of the freight passing over them as the commercial center needs under the irrepressible laws of trade, there finds its lodgment for distribution over the world. Still more, New York is one of the best situated places for manufactures in the country. Every gentleman who sails down the Hudson river, past the great iron manufactories, can contrast the present with the condition of things fifty years ago. Over a thousand steam engines have for years, within its walls and beneath its pavements, aided the energies of its million souls. New York has proved to be a point well adapted for the rudimental manufacture of iron ore—in the pig state—and the various other manufactures connected with that leading article of our products; and in her wharves, warehouses and other facilities for commerce, she cannot be overborne. I believe, from the opportunities that I have had for the last half century to know something of the city of New York, that while she may be affected injuriously by adverse legislation, and perhaps partially benefited by favorable legislation, yet her destiny is beyond the powers of legislation. She will be, as my young friend from Columbia [Mr. Silvester] has said, in a few years, the great central distributing city of the world—perhaps even for the produce of the East Indies. Therefore, I am opposed to spending so much time upon the question, when there is so much more to do of far greater importance to the people of the State—I allude especially to the three reports on finance lying unacted upon in the Committee of the Whole—questions of deep interest to every individual. I listened with great interest to the reports, and I say again that I do not think the chairman of that committee [Mr. Church], has over-estimated the contributions which the people of New York are called upon to make to the general government as a moderate estimate of our proportion of the one hundred and fifty millions of custom-house duties paid, the items of direct taxation, income, and other United States taxes, our county, village and town taxes, together with our State tax of twelve or fifteen millions. That gentleman estimates that within the coming year one hundred and eighty-two millions of dollars will be drawn from the industry and the capital of the State of New York; and I fear that in many instances the exaction will be solely upon the capital of its citizens, for at the present time, I do not think that the industry of our people is reaping the reward that it merits in the profits of business. When questions of this kind are brought before us, with a resolution on our table to adjourn on the 10th of September, these debates are frivolous and wrong. I do not

believe the people of the State will indorse them by their votes when the question is taken. Let us go on with our regular work. An attempt to deal with a gigantic question like this—based upon a higher law than we can invoke—was made, within my recollection, during the session of the Convention of 1846. It was strenuously advocated by a gentleman who appeared on this floor with the well-earned character of a statesman, acquired in the Congress of the United States, where for years he was chairman of finance and was also Chairman of the Committee on Corporations in that Convention. He presented to the Convention a proposition quite analogous to the one here. It was that the succeeding Legislature should designate the amount of circulation—not the mode in which it was to be used or secured—but the amount in millions of circulation that the State of New York should authorize the banks to issue. After one evening's debate, with the weight of his influence exercised on the floor, a very large majority of the Convention adopted this idea against the feeble protests of one or two gentlemen. It required, however, but a night to sleep upon it, and the next morning the same gentlemen who had strongly advocated the measure were each striving to get ahead of the other in moving to reconsider it, and it was reconsidered. That was considered by that distinguished gentleman more important than all the other principles we adopted. It afterward took a form different from what that gentleman, with all his influence and with all his opportunities of judging the matter, desired. We know what the result of the banking laws of 1846 have been in our State and in our Union, for it is virtually the law of the Union, as well as of England. With these observations I leave the subject to others. I am opposed, of course, to both amendments. [Laughter.]

The Chair announced the question on the amendment of Mr. Flagler.

Mr. ALVORD—As there is a question about the fact of there being a quorum here, I think it is best not to press this to a vote, as a division would show that fact very soon. If any gentleman wishes to speak, I have no objection.

DELEGATES—"No, no! Let's have a vote."

Mr. GREELEY—I hope we will vote. I was going to say a word, but in that event I will not speak.

The question was put on the amendment of Mr. Flagler, and it was declared lost.

Mr. ARCHER—I offer the following amendment, which the Secretary will please read:

The SECRETARY read the amendment:

Add to the amendment of Mr. A. J. Parker, the following: "And no corporation shall be permitted, either by purchase or otherwise, to absorb or control any other corporation of a competing character."

Mr. GREELEY—A few words only in reply to some remarks of the gentleman from Albany [Mr. A. J. Parker], and I desire to be distinctly understood to have no part nor lot in the controversy which he here agitates and deprecates, concerning Wall street. I have no stock in any railroad company. I

never was a director in any railroad company, nor a party to any project for buying stock or selling stock, "short" or "long" and I have only the interest of a citizen, living on one of our railroads, traveling on a good many, and paying my fare on every one of them. Now, I have a few facts which I desire to present, bearing upon this question, and upon the interests of the citizen in this question. I happen to live on the Harlem railroad; that railroad does not extend to this city. I buy tiles in this city for my little farm, and have to transport them over twenty-five miles of the Western railroad of Massachusetts, and then over the Harlem railroad, and I am charged \$25 per car load for twenty-five miles of Western road, and then I pay \$30 for the same car load one hundred miles over the Harlem road. If, in other words, I had to deal with one, rather than two railroads, I should save fifteen or twenty dollars on every car load of tiles. Of course, my little experience is a part of the general experience of the people of this State. I do not know that I ever favored the consolidation of the New York Central; I have generally been in opposition to its management; but I have no doubt that the people of this State have saved millions in freight and fare by that consolidation. We have much lower freight and fare, I think, than we could have had in the absence of consolidation. A large amount of business has been transacted in this State which would otherwise have been sent through other States over competing lines. Now, then, I look to the interests of the producers of wealth, and I say, as a general proposition, which the experience of most people will confirm, that every consolidation brings with it cheaper fare, cheaper ransit than we should have without it; and for a very excellent reason. There are fewer boards of directors, fewer superintendents, fewer managers, and fewer ticket-sellers, and all such officers. Here is an economy created, whereby the people of the State are benefited. I wish we had a railroad running from New York to Chicago under one corporation. It would have to encounter a dozen competitors, and who doubts that that corporation would carry freight and passengers very much cheaper than any combination of separate corporations? It would do so because it could afford to do so. I believe that, as a general thing, men consult their own interests in their business, and they carry cheaply because they can afford so to carry. Now, sir, I am openly and earnestly in favor of the further consolidation of the railroads of this State. I hold no share in any one of them, and I do not know that I have a friend in the management of one of them; but simply as a citizen who uses railroads and pays for so doing, I wish that the line running from New York to the Mississippi was not under the control of a dozen different corporations, so that I could put my trunk on one of them, and when I reached the end of my journey know where to find it. I wish the management was in fewer hands, so that I could have a surer and readier redress in case of any grievance. Now, then, I am opposed to all these propositions, every one of them. I am opposed to fettering our railroads by putting into the Constitution a restriction

which a year or two years' experience may prove to be injurious. We are met here with this old war-cry, "Monopolies! Monopolies!" I do not understand its application to this matter; but if any gentleman chooses to buy or invest in a railroad, he does so in full view of the certainty that there will be more and competing railroads. If our case were like that of New Jersey, where a certain company has an exclusive right to carry passengers and freight across that State between the two chief cities of the union, that would be a monopoly; but where certain gentlemen choose to buy railroads, or to consolidate railroads, and the people have the right to build another railroad on each side of this one, I see no feature of monopoly. If one gentleman has a great deal more money than others, that is a monopoly in a certain sense, in that he can wield more money, and probably make more; but I do not understand that there is any monopoly in the fact that Mr. Vanderbilt has several millions. If I were forbidden by law to make or earn money, than he might be said to have a monopoly; but so long as the liberty to make money is as open to me as to him, I do not complain. He can buy more railroad shares than I can, and pay for them; but I am at liberty to build new roads or pay for old ones, and I cannot see how the word monopoly has any application to the case in hand. I do hope that none of these schemes which seems to me to be prompted by jealousies and rivalries, will be fastened on our Constitution.

Mr. ARCHER—I did not propose to take any part in what seems to me to be a controversy between rival interests; but I wish, sir, to bring before this committee the principle in which, it seems to me, the people of the State generally have a deep and an abiding interest—that no corporation shall be permitted, by purchase or otherwise, to absorb or control any other corporation of a competing character. Now, for one, sir, I have no dread of the formation of a continuous line of railroad or telegraph through the State. But, sir, the danger, it seems to me, is here—that, when a very large amount of wealth has been aggregated together, it may, by purchase, by lease, or by some other means, overshadow or prevent the formation of a rival to itself. I have no fears of the influence of the Central railroad upon the politics or upon the future prosperity of the State, if the people shall be left free to make another and a rival road. Hence I would put this clause, or something similar, into the Constitution, to preserve forever to the people an entire freedom from any overshadowing monopoly—preventing one great corporation from breaking in upon, absorbing, and putting out of existence, so to speak, that which would grow up into a wholesome competition to itself. And there is no danger to be apprehended to the liberty or the safety of the people, while free competition is allowed.

Mr. SCHOONMAKER—I simply desire to reply to a portion of the remarks made by the gentleman from Westchester [Mr. Greeley]. He speaks of the consolidation of the Central, and of the effect of that consolidation being the lowering of the fare and the lowering of the charges on

freight. Now, sir, does not that gentleman recollect this fact, that the Erie railroad was only completed a year or two before the consolidation of the Central, and that we could not feel, and had no opportunity of feeling the effect of the competition of the Erie upon the prices and charges of freight upon the Central before consolidation? It was only about the time that the consolidation of the Central took place that the effect of the Erie could be felt upon the charges for freight between New York city and Buffalo; and I contend that it was the competition existing between the Erie road and the Central road that has kept the charges for freight and passengers down, and not the effect of the consolidation. If we go on and leave the matter open, so that the Erie and the Central can be consolidated together with the Hudson River and the Harlem, you destroy that competition, and the man who owns them all can fix his own prices and his own charges.

The question was put on the amendment of Mr. Archer, and it was declared lost.

Mr. PAIGE—I move to amend the proposition of the gentleman from Albany [Mr. A. J. Parker] by making the amount twenty millions.

Mr. A. J. PARKER—I will accept that amendment.

The question was then announced on the amendment of Mr. A. J. Parker as amended.

Mr. ROBERTSON—If it is the intention of the friends of this proposed measure to press it to a vote to-night—in a thin house, without a quorum of members present—I should like to say a few words upon the question. With a view to ascertain that, sir, I move that the committee rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Robertson, and it was declared lost, on a division, by a vote of 37 to 43.

SEVERAL DELEGATES—There is no quorum voting.

The CHAIRMAN—There being no quorum present, the President will resume the chair.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. CHESEBRO, from the Committee of the Whole, reported that the committee had under consideration the joint report of the Committees on Currency, Banking and Insurance and on Corporations other than Municipal, and that, on a division being taken, it was found that no quorum was present.

The PRESIDENT directed the Secretary to call the roll of the Convention, which was done, and it was found that the following delegates were present:

Messrs. C. L. Allen, Alvord, Andrews, Archer, Axtell, Barker, Barto, Beadle, Berckwith, Bell, Bickford, E. P. Brooks, J. Brooks, Carpenter, Cassidy, Champplain, Chesebro, Church, Conger, Corbett, Corning, Curtis, C. C. Dwight, Ely, Endress, Evarts, Folger, Fowler, Gerry, Goodrich, Greeley, Hale, Hand, Hardenburgh, Harris, Hiscock, Hitchcock, Houston, Hutchins, Kinney, Krum, Lapham, A. Lawrence, Lee, Ludington, Magee, Mattice, Merrill, Merwin, Monell, More, Morris, Nelson, Opdyke, Paige, A. J. Parker, C. E. Parker, Pierrepont, President, Prindle, Prosser, Rathbun,

Robertson, Root, Rumsey, Schell, Schoonmaker, Seaver, Seymour, Silvester, Sheldon, Strong, S. Townsend, Van Cott, Wakeman, Wales, Williams, Young—78.

Mr. ALVORD—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Alvord, and it was declared carried.

So the Convention adjourned.

TUESDAY, August 20, 1867.

The Convention met at ten o'clock A. M.

Prayer was offered by Rev. JAMES P. MAGEE.

The Journal of yesterday was read by the SECRETARY, and approved.

Mr. LEE—I was requested by Mr. Gould yesterday morning on leaving his house, he being unwell, to ask leave of absence for him indefinitely.

There being no objection, leave was granted.

Mr. M. H. LAWRENCE—I wish to ask leave of absence for Mr. Gross. I have received a letter from him stating that he is unwell, and that he would like to have his leave of absence extended until Thursday.

There being no objection, leave was granted.

Mr. CASSIDY—I desire to ask leave of absence for Mr. Corning for two days.

There being no objection, leave was granted.

Mr. SEYMOUR—I wish to ask leave of absence for Mr. Lowrey, of Brooklyn, for three days. The excuse is the sickness of his father.

There being no objection, leave was granted.

Mr. C. C. DWIGHT—I am compelled to ask leave of absence for myself for three days, after the session of to-day.

There being no objection, leave was granted.

Mr. BARKER—I ask for leave of absence for my colleague, Mr. A. F. Allen, of Chautauqua, for the remainder of this week.

There being no objection, leave was granted.

Mr. COCHRAN—I request leave of absence for myself from this session until next Thursday morning.

There being no objection, leave was granted.

Mr. PRINDLE presented six petitions of residents of the county of Chenango, containing two hundred and fifty-nine names, asking the separate submission of a clause prohibiting the sale of intoxicating liquors as a beverage.

Which was referred to the Committee on Adulterated Liquors.

Mr. CASSIDY presented a petition on the same subject.

Which took a like reference.

Mr. LAPHAM, from the Committee on Canals, submitted the following explanation, to accompany the report heretofore made from that committee:

Your committee, in view of the great importance of the subjects thus considered, present a statement of the reasons which have governed their action in submitting the foregoing article for adoption by the Convention.

Your committee assume that the canals are to remain the property of the State. Such was the determination of the Convention of 1846. The people ratified the decision by adopting the present Constitution. That expression was renewed

in the amendment of 1854. The unanimous report of the Committee on Finance, just submitted, recommends the re-enactment of the prohibition, contained in the present Constitution, and in that we entirely concur.

With respect to the resolution referred to your committee, "to inquire into the expediency of providing by an amendment to the Constitution for the leasing for a term of years the Champlain canal or any other of the lateral State canals," etc., your committee are of opinion that no such disposition is practicable.

The lateral canals should be treated as parts of an entire system, which, as a whole, is self-sustaining and highly remunerative to the State, and no part of the same can be abandoned without doing injustice to localities and incurring the serious and merited displeasure of large portions of the people. A majority of the railroads which have been constructed in the same or similar localities, have proved disastrous and non-paying investments to the proprietors; yet no one, in the sections interested, would tolerate the idea of their abandonment.

Assuming that the canals are to remain State property, the important question arises, what shall be the future policy of the State in regard to this vast system of internal navigation and commerce with other States, through their agency?

Shall they be preserved, improved and made as remunerative and beneficial to the public as the legitimate use of their resources will admit consistently with existing obligations, and without resorting to taxation for that purpose; or shall they be denied all further improvement, their diminished revenues handed over to other objects, and the faith and honor of the State sacrificed?

To adopt at this late day a system which will prevent the further improvement of the canals out of their own earnings, when such improvements are found necessary, and such earnings sufficient for the purpose, and which would divert the growing commerce of the Northwest to other channels, would be the height of financial folly and an inexcusable denial, on the part of this great State, of those obligations to the other States, which arise from our geographical and commercial position.

It is a truism that our conduct should at least be as liberal and considerate with reference to the future as would be that of an individual in similar circumstances.

Entertaining these views, your committee have devoted much of their time to the question as to what improvements, if any, are necessary, and whether the revenues will be sufficient for the purpose of such improvements without resort to taxation, and without any abandonment of the pledges of the existing Constitution.

Your committee found these questions very fully considered and discussed in the reports upon the subject made by the Canal Committee to the Legislature during its last session, and in the official reports of canal officers for several years past.

They have also taken the examination of engineers, public officers and practical operators, who were deemed to possess the most reliable knowledge upon the subject.

From these sources it appears that in the enlargement of the Erie canal about seventy miles of the eastern section, being the first portion enlarged, was constructed with what are termed wall-benches, and is from six to ten feet narrower on the bottom than the remainder of the channel. The reverse should be the case, and the eastern wider portion, to accommodate the accumulation of boats as they come in from the other canals and approach the Hudson river. The removal of these wall-benches, so as to make this portion of the canal as wide at least as the remaining portion, is indispensable to secure the full navigable capacity of the Erie canal.

They are also of opinion that the present locks upon the Erie, Oswego and Cayuga and Seneca canals do not furnish to the canals more than one-quarter of such navigable capacity. The locks will not admit of the passage of boats carrying over about two hundred tons, and for considerable portions of the seasons of navigation they are not sufficient to accommodate the business now offered.

The published estimates and tables, based upon an equal distribution of lockages through the entire season of such navigation, show that not over seventy-five or eighty per cent of the capacity of the locks has yet been reached.

But these estimates are fallacious in practice, as the main business is crowded into a much shorter period of time. The lockages cannot, in practice, be so distributed, and when boats are crowding for lockage, the time of passing will always be more or less delayed by irregularities which unavoidably will occur.

In the mode in which the business is now done, the locks are taxed, during the season from harvest to near the close of navigation, to their full capacity, and at times, beyond that. This is shown to have been the case for several years, resulting at times in serious and protracted delays in navigation.

To obviate this and to secure to the public the use of the navigable capacity of the canals, it is proposed to construct a single tier of locks of sufficient size to pass boats twenty-three feet in width and two hundred feet in length, capable of carrying six hundred tons. The boats now in use can be passed through such locks with the same facility as through those at present existing. The materials, where there are double locks, are nearly, perhaps quite, sufficient for the new structures. To do an equal amount of business the number of lockages will be diminished; carriers will be enabled to take freight at reduced prices, and steam can be used as a propelling power.

The following extract from the report of the Committee on Canals, to which reference has been made, and which has been furnished to the members of the Convention, is pertinent in this connection:

"If any are of the opinion that the proposed work is of doubtful utility, after what has already been stated herein, the committee respectfully refer all such to the Delaware and Raritan canal, in the State of New Jersey, a canal of about the same sized prism as the Erie; with locks two hundred and twenty feet long, and twenty-four feet wide, two boats the size of those now in use upon our canals will pass one of those locks at the same time, full as quickly as one will through our locks; and steamers from one hundred and

fifty to two hundred feet long, and say twenty-three feet wide, have been in successful operation thereon for the last twelve or fifteen years. Their average speed, including lockages, being three miles per hour, at which they are limited by the regulations upon the canal."

This change will diminish the cost of transportation, give to the public the full use of the enlarged channel of the canals, and secure to us the rapidly increasing commerce of the West and Northwest. Already the opening gates of other avenues are turning on their hinges, and unless we act promptly and wisely the flood may pass in other directions.

We must depend mainly upon this commerce for our future revenues. The history of canal transportation abundantly proves this.

In 1837 there was only 56,255 tons from the West reaching tide-water, while from within the State the quantity was 321,251 tons. In 1866 the amount from within the State had diminished to 287,948 tons, while that from the West had increased to 2,235,716 tons. This was the largest quantity ever received, save in the exceptional years of 1862 and 1863, when the greatest delays occurred in the navigation of the canal. With these exceptions the increase has been gradual and almost uniform from the opening of the Erie canal to the present time, as will appear by the following table, giving the tonnage arriving at tide-water by the Erie canal for the last thirty years, and the portions from within the State and from the Western States and Canada.

YEARS.	From Western States, tons.	From this State, tons.	Total tons.
1837,	56,255	321,251	587,506
1838,	83,233	336,016	419,249
1839,	121,671	264,596	386,267
1840,	158,148	309,167	467,315
1841,	224,176	308,344	532,520
1842,	221,477	258,672	480,149
1843,	256,376	373,969	630,345
1844,	308,025	491,791	799,816
1845,	304,551	655,039	959,590
1846,	506,830	600,662	1,107,492
1847,	912,840	618,412	1,531,252
1848,	650,154	534,183	1,184,337
1849,	768,659	498,068	1,266,724
1850,	773,858	598,001	1,371,859
1851,	966,993	541,684	1,508,677
1852,	1,151,978	492,721	1,644,699
1853,	1,213,690	637,748	1,851,438
1854,	1,100,526	602,167	1,702,693
1855,	1,092,576	327,839	1,420,715
1856,	1,212,550	374,580	1,587,130
1857,	918,998	197,201	1,117,199
1858,	1,273,099	223,538	1,496,637
1859,	1,036,634	414,699	1,451,333
1860,	1,896,975	379,086	2,276,061
1861,	2,158,425	291,184	2,449,609
1862,	2,594,837	322,257	2,917,094
1863,	2,279,252	368,437	2,647,689
1864,	1,907,136	239,498	2,146,634
1865,	1,903,642	173,538	2,077,180
1866,	2,235,716	287,948	2,523,664

So the statistics show a like gratifying increase upon the tonnage of all the canals during the same period. In 1837 there was carried upon all the canals 1,171,296 tons, valued at only \$55,809,288, and producing a revenue in tolls of \$1,292,623, while in 1866 we reached the enormous amount of 5,775,220 tons, valued at \$270,963,676, and producing a revenue in tolls of \$4,436,639.

The following table will show the remarkable steadiness and uniformity of this increase:

YEAR.	Tons.	Value.	Tolls.
1837,.....	1,171,296	\$55,809,288	\$1,292,623
1838,.....	1,333,011	65,746,559	1,590,911
1839,.....	1,435,713	73,399,764	1,616,332
1840,.....	1,416,046	66,303,892	1,775,747
1841,.....	1,521,661	92,202,929	2,034,882
1842,.....	1,236,931	60,016,608	1,749,196
1843,.....	1,513,439	76,276,909	2,081,590
1844,.....	1,816,586	90,921,152	2,446,374
1845,.....	1,985,011	100,553,245	2,646,181
1846,.....	2,268,662	115,612,109	2,756,106
1847,.....	1,869,810	151,563,428	3,635,381
1848,.....	2,796,230	140,086,157	3,252,212
1849,.....	2,894,732	144,732,285	3,268,226
1850,.....	3,076,617	156,397,929	3,273,899
1851,.....	3,582,733	159,981,801	3,329,727
1852,.....	3,863,441	196,603,517	3,118,244
1853,.....	4,247,852	207,119,570	3,204,718
1854,.....	4,165,862	210,284,312	2,773,566
1855,.....	4,032,617	204,390,147	2,805,077
1856,.....	4,116,082	218,327,062	2,748,203
1857,.....	3,343,961	136,997,018	2,045,641
1858,.....	3,665,192	138,568,844	2,110,754
1859,.....	3,781,684	132,160,758	1,723,945
1860,.....	4,650,214	170,849,198	3,079,597
1861,.....	4,507,635	130,115,893	3,908,785
1862,.....	5,598,785	203,234,331	5,188,943
1863,.....	5,557,692	240,046,461	4,645,207
1864,.....	4,852,941	274,400,639	3,983,982
1865,.....	4,729,654	256,237,104	3,899,955
1866,.....	5,775,220	270,968,676	4,436,639

In 1866 3,305,607 tons reached tide-water from the Erie and Champlain canals. This was more than the foreign exports or imports at the city of New York. The rapid settlement and growth of the new States, and the rapidly increasing products of the States of the Northwest demand more ample facilities for transportation. It is clear that an increase of the capacity of the locks and aqueducts and the removal of the wall-benches are all that is requisite to furnish such facilities. If we fail to do this, that increasing commerce will be forced to seek other channels; but, if we exercise that wisdom and foresight which characterized the conduct of the distinguished men with whom the canal system originated, the Erie canal may continue to be what they designed and hoped it would always remain—the great artery of commerce from the lakes to the ocean.

Why should not such improvements be made upon the canals as time and experience have proved to be necessary, and as our means will allow? In truth, the position is now openly advocated that they should not be improved. The opponents of such improvement intrench themselves behind the position that the work is wholly unnecessary.

It is a strange position to advance that in the construction and operation of railroads, in river and ocean navigation, various improvements and vast expenditures are annually found necessary to supply the public wants and promote economy and convenience, but no such necessity exists in respect to the canals. They must stand still. Had the destinies of the Empire State always rested in the hands of such advocates, the Erie canal would never have been constructed.

The suggestion that this increasing business can be done by constructing railroads needs but a moment's notice. It is entirely impracticable.

What is to be done with all this property when transported to New York by rail? The Atlantic docks and the immense expenditure which has been made to furnish facilities for this commerce, by water, what is to be done with those? The increased expense by rail is another insuperable objection. The actual cost to the railroad from Buffalo to New York for the past three years, as appears by the returns made under oath, on behalf of the New York Central railroad company, has been double all the charges upon the Erie canal, and in excess of the water carriage from Chicago to New York.

The following is a statement of such cost and charges:

Comparative statement of movement of eastward bound tonnage on the Erie canal and New York Central railroad.			
1866.	Canal.	Railroad.	
	2,523,664	478,748 742,159	1 15-100 cts.
1865.	Canal.	Railroad.	
	2,077,180	369,214 541,916	1 12-100 cts.
1864.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1863.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1862.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1861.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1860.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1859.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1858.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1857.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1856.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1855.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1854.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1853.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1852.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1851.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1850.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1849.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1848.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1847.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1846.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1845.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1844.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1843.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1842.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1841.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1840.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1839.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1838.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
1837.	Canal.	Railroad.	
	2,146,634	479,281 761,162	1 25-100 cts.
Total tonnage movement, less animals, during navigation,...			
	Total tonnage movement for year by railroad,.....		
Cost to railroad and freight charge, including tolls on canal per ton per mile, on whole movement (average),.....			
	Cost to railroad and freight charge, including tolls on canal and river per ton, from Buffalo to New York on whole movement (average),.....		
Freight charge, including tolls on lake, canal and river from Chicago to New York, on whole movement (average),.....			
	Average cost per ton for three years, from Buffalo to New York by rail,.....		
Average freight per ton for three years, from Buffalo to New York, canal,.....			
	Average freight per ton for three years, from Chicago to New York, canal and lakes,.....		

The reports also show that the cost of repairs upon the track of railroads is equal to about ten per cent upon the cost of the road track, while the cost of superintendence and repairs upon the Erie canal, with all the waste of money which has occurred, is only about one-tenth of that sum, or less than one per cent.

It will be an unfortunate day for the people of this State when they adopt and act upon the idea that the canals have "fulfilled their mission," and that "we have outgrown their more important use." The Central road, during the periods aforesaid, carried all the freight its cars would hold or its motive power propel, at the time when freights were pressing, and yet the quantity, except animals, was only about one-fifth part of that taken by the canal, and including live stock less than one-third.

The Auditor has reported to this Convention in response to a resolution of inquiry the aggregate cost of all the canals and feeders, both productive and unproductive, with all cost of maintenance and repairs, and interest at seven per cent upon all such expenditure. (Manual, vol. 2, 450, 451.) The entire cost and interest foots at \$200,093,502.25.

The entire income, with interest, has been \$202,619,510.08. This leaves the canals debtors to the State in the sum of \$7,473,992.27. Assuming this statement to be correct, it follows that what are now termed canal debts have been arbitrarily fixed as such. In no estimate or statement which has fallen under our observation, except in this of the Auditor, have the canals been credited with the \$200,000 per annum which has been paid for the support of the State government out of their revenues since 1846.

This account of receipts and expenditures, and interest on each, appears to be the true mode of determining the extent to which the canals are indebted to the State.

In either view of the subject the question may well be asked, what system of public works of equal magnitude can compare with our canal system in the remuneration they have furnished for the expenditures made in their construction and maintenance?

The canals we propose to have improved are creditors to the amount of over thirty-eight millions of dollars.

In determining the question whether the proposed improvement can be made without taxation, your committee have provided in the foregoing article for the payment of the principal and interest as they fall due of the canal debt, the enlargement debt, the floating debt, and the interest on the general fund debt. The appropriation already made for the Champlain canal is supposed to be sufficient for the work, as now authorized by law; but an additional sum is set apart to meet any contingency, and save a resort to taxation.

They have estimated the cost of building the enlarged works at \$40,000 per lock, or \$4,000,000. Witnesses have testified that price is ample for the purpose.

An experienced contractor and former canal officer, on his examination, stated he would be willing to do the work at the sum named.

For the removal of the wall-benches; for additional water and basins, and for enlarging aque-

ducts and bridges, the estimates heretofore made are, in substance, adopted.

A survey and estimate of the cost of enlarging the locks and making improvements, as proposed, were made in 1863. An experienced engineer, who assisted in making them, as the agent of the general government, was examined as a witness before us. From his evidence, it appears that the work was projected with a view of affording a passage for gun-boats to the lakes. The plan was to construct a series of new locks, all of new material, of the highest finish used in structures of that character, leaving one tier of the present locks for permanent use. In arriving at the cost of twelve millions for such work, the cost prices of 1860 were adopted and fifty per cent added thereto.

Three items of the same, for deepening the canal one foot, for land damages and removal of buildings, and engineering and contingencies make \$3,417,421. By changing the masonry from the full finish therein contemplated to what is termed rough dress or hammered masonry, and by using the materials on hand, which are believed to be ample, where there are double locks, that estimate is greatly reduced. The materials equal about one-half the cost of masonry.

Recapitulation.

For Champlain canal,.....	\$300,000 00
Enlarging locks,.....	4,000,000 00
Enlarging aqueducts and bridges,.....	300,000 00
Additional water and basins,.....	400,000 00
Removal of wall-benches, etc.,.....	1,644,314 00

Estimated total cost,..... \$6,644,314 00

The canal debts for payment of which provision is made, are as follows:

Canal debt of 1846,.....	\$3,265,000 00
Canal enlargement debt,.....	10,807,000 00
Floating debt,.....	1,700,000 00

Total,..... \$15,772,000 00

The following statement shows the mode in which the obligation to pay the above debts may be sacredly observed, the interest on the general fund debt paid, the contemplated improvements made, and upon the basis of \$3,000,000 net revenue in each year, which is about the average of the last seven years:

Cash on hand May 1, 1867, applicable to the payment of said debts, and the general fund debt, as stated by the Auditor as follows:

In the sinking fund, under section 12 of article 7,.....	\$324,982 02
In the sinking fund, under section 3 of article 7,.....	608,852 33
In the sinking fund, under section 1 of article 7,.....	1,076,900 00

\$2,010,734 35

Interest May 1, 1867, to January 1, 1868, at 4 per cent,..... 53,619 58

Net tolls, season of 1867,.... \$3,000,000 00

Less interest on canal debt from April 1, 1867, to July 1, 1868 (nine months)..... \$684,853 75

Interest on general fund debt Oct. 1, 1866, to Jan. 1, 1868,....	403,022 94	1,087,881 69	1,912,118 31
------------------------------------------------------------------	------------	--------------	--------------

Balance, January 1, 1868,..... \$3,976,473 24

Interest on balance, 1 year at 4 per cent.	\$159,058 89	Principal canal debt, November 1, 1873, ..	\$2,250,000 00
Net tolls, season of 1868, ...	\$3,000,000 00		
Less interest on general fund debt, 1 year, ...	\$322,418 35	Borrow at 6 per cent, January 1, 1874, for three years,	\$30,460 15
Less interest on canal debt, 1 year,	900,932 50		3,500,000 00
Less principal on canal debt, due October 1, 1868,	257,000 00 1,489,350 85	Principal canal debt, January 1, 1874, ...	\$3,520,460 15
	1,510,649 15		\$3,000,000 00
Balance, January 1, 1869,	\$5,646,180 28	Balance January 1, 1874,	\$520,460 15
Interest 1 year on balance at 4 per cent, ..	225,847 21	Interest at four per cent, one year,	20,818 41
Net tolls, season of 1869, ...	\$3,000,000 00	Net tolls, season of 1874, ...	\$3,000,000 00
Less interest on general fund debt 1 year, ...	\$322,418 35	Less interest on general fund debt, 1 year,	\$322,418 35
Less interest on canal debt, 1 year,	900,295 00 1,222,713 35	Less interest on canal debt, 1 year,	185,250 00
	1,772,286 75	Less int. on deficiency loan of \$3,500,000, made Jan. 1, 1874, at six per cent., 1 year,	210,000 00 717,668 35
Balance, January 1, 1870,	\$7,644,314 24		2,232,331 65
Appropriate for canals as before stated, ..	6,644,314 24		
	\$1,000,000 00		\$2,823,610 21
Interest 1 year at 4 per cent to January 1, 1871,	40,000 00	Principal canal debt, October 1, 1874,	2,230,000 00
Net tolls, season of 1870, ...	\$3,000,000 00		
Less interest on general fund debt 1 year, ...	\$322,418 35	Balance January 1, 1875,	\$573,610 21
Less interest on canal debt, 1 year,	900,295 00 1,222,713 35	Interest at 4 per cent for one year,	22,944 41
	1,777,286 65	Net tolls for the season of 1875,	\$3,000,000 00
Principal canal debt, January 1, 1871,	\$2,817,286 65	Less int. on gen. fund debt, 1 year,	\$322,418 35
	57,000 00	Less int. on canal debt, 1 year,	84,000 00
Balance, January 1, 1871,	\$2,760,286 65	Less int. on defic'y loan of \$3,500,000 made Jan. 1, 1874, for 1 year, at 6 per cent., ..	210,000 00 616,418 35
Interest 1 year at 4 per cent,	110,411 47		2,383,581 65
Net tolls for season of 1871, ..	\$3,000,000 00	Principal due October 1, 1875,	\$2,980,136 27
Less interest on general fund debt 1 year, ...	\$322,418 35		500,000 00
Less interest on canal debt, 1 year,	897,445 00 1,219,863 35	Balance Jan. 1, 1876, ...	\$2,480,136 27
	1,780,136 65	Interest at 4 per cent, 1 year,	60,205 45
Principal canal debt, January 1, 1871,	\$4,650,834 77	Net tolls for season of 1876, ..	\$3,000,000 00
	93,016 70	Less int. on gen. fund debt, 1 year, ...	\$322,418 35
Balance, January 1, 1872,	\$4,743,851 47	Less int. on canal debt, 1 year,	54,000 00
Interest six months to July 1, 1872, at 4 per cent,	93,016 70	Less int. on defic'y loan of \$3,500,000	210,000 00 586,418 35
Principal canal debt, July 1, 1872,	\$4,743,851 47		2,413,581 65
	2,800,000 00		\$4,992,923 37
	\$1,943,851 47	Deficiency loan made January 1, 1874, ...	3,500,000 00
Interest six months to January 1, 1873, at 4 per cent,	38,877 03	Balance, January 1, 1877,	\$1,492,923 37
Net tolls for season of 1872, ..	\$3,000,000 00	Interest at 4 per cent, 1 year,	59,716 93
Less interest on general fund debt 1 year, ...	\$322,418 35	Net tolls for season of 1877, ..	\$3,000,000 00
Less interest on canal debt, 1 year,	813,445 00 1,135,863 35	Less interest on general fund debt, 1 year, ...	\$322,418 35
	1,864,136 65	Less interest on canal debt, ...	49,500 00
Principal canal debt, January 1, 1873, ...	\$3,846,865 15	Less principal on canal debt, ..	900,000 00 1,271,918 35
	1,000,000 00		1,728,081 65
Balance, January 1, 1873,	\$2,846,865 15		
Interest six months to July 1, 1873, at 4 per cent,	56,937 30	Balance, January 1, 1878,	\$3,280,721 95
Principal canal debt, July 1, 1873,	\$2,903,802 45	Interest at four per cent,	31,228 88
	\$2,750,000 00	Net tolls for season of 1878, ..	\$3,000,000 00
	\$153,802 45	Less interest on general fund debt one year, ..	322,418 35
Interest six months to January 1, 1874, at 4 per cent,	3,076 05	Less principal canal debt due Oct. 1, 1868, omitted	900 00
Net tolls, season of 1873, ...	\$3,000,000 00	Less principal canal debt, ..	
Less interest on general fund debt, 1 year, ...	\$322,418 35		
Less interest on canal debt, one year, ...	564,000 00 886,418 35		
	2,113,581 65		
	\$2,270,460 15		

due Jan. 1, 1874, omitted	\$8,000 00		
Less principal canal debt, due in 1837, prob'ly lost,	160 00		
Less principal canal debt, due in 1860, prob'ly lost,	10,000 00		
Less interest on the \$8,000 and \$900,...	1,960 00	343,438 32	2,656,561 65
January 1, 1879, principal of general fund debt,.....		5,636,622 22	\$6,068,512 48
Balance January 1, 1879,....		\$431,890 26	

It will be observed that a deficiency loan of three and a half million dollars, to extend for the term of three years, will become necessary in 1874. Two installments of the general fund debt, amounting to \$1,642,961, will also have to be provided for in like manner. Provision is also made for the ultimate repayment to the State of the general fund debt, and of all advances heretofore made, or hereafter to be made to the canals, with interest thereon at current rates.

If the annual revenues shall increase, all the rate per cent contemplated, these loans will not become necessary; but the debts, including the general fund debt, will all have been paid by the year 1877, and a large balance will be left in the treasury, as will appear by the statement and estimate of the canal committee, to which reference has been made.

It will be observed that the above mentioned provisions supersede the State loan, to pay the interest on the floating debt, and to that extent relieve the people.

Your committee believe a larger annual revenue than \$3,000,000 will be realized. The expenses of maintenance and repairs will, we hope, be materially diminished. With an increase of tonnage even at the average rate of the last twenty years, and with undiminished tolls for which we have provided, such increase is certain.

A glance at the past, on this subject of tolls, will be instructive.

At the rate existing in 1846, when the present Constitution was adopted, the receipts for tolls for the year 1866 would have been \$6,930,264, or \$2,477,039 in excess of the sum actually obtained. It is the opinion of your committee that the tonnage will not be materially affected by a change of tolls within the range of prices charged since 1852. The capacity of the canals to afford facilities for transportation, so that forwarders can lessen the expense of their labor, will do far more to attract tonnage to the canals than any adjustment of the tolls which may be made.

The experiment adopted in 1858 to 1860 to invite additional tonnage, by a reduction of tolls, resulted in no substantial increase by the same while the State sustained a loss of revenue of \$1,998,966, or more than the entire floating debt, in those three years; and before the State restored the present rates, the loss was over \$2,600,000.

The tonnage since 1846, at the rates of toll existing when the present Constitution was

adopted, would have produced in excess of the actual receipts, at the rates since charged, \$30,703,454.

This sum would have more than paid the entire debts chargeable upon the canals, and the improvements since made, and have left them the creditors of the State.

In considering the subject of the care and management of the canals, we have arrived at the conclusion that concentration of power and a clearly defined responsibility furnish the surest guarantees for a more economical and efficient administration.

This end they hope to secure by the abolition of the offices named and by placing the canals under the charge of a single superintendent, with assistants amenable to himself, and employees of his selection, and always subject to his control. The combinations which have been strengthening and forming for so many years, and which have resulted so disastrously to the interests of the State, as shown by the recent investigations, will thus be broken up.

The committee regard the appointment of the Superintendent by the Governor and Senate, to hold for a term of eight years, subject to removal for cause, as the most advisable mode of selection. It will place such officer in a position of independence of political organizations, and above the vicissitudes and changes resulting from party contests.

Who can doubt what would have been the result had the New York Central railroad company, at the date of its organization, resolved to select its superintendent at short stated periods, by a vote of all the stockholders, instead of leaving his selection to the executive board? Combinations for the promotion of favored persons, without due regard to their fitness for the position, would have been the inevitable result, and inefficiency and want of success in the management would doubtless have been the consequence.

It is in no spirit of hostility to the elective principle that we make this recommendation. The people elect the Governor and Senators, by whom the selection is to be made, and the duties of the position are such that fitness alone should control the choice, and the interests at stake are too vast to be left to the capricious choice of nominating conventions.

The recommendation as to the appointment of the Auditor is in conformity to the usage which has prevailed since the office was created and to which we have heard no objection.

Your committee feel constrained to notice the proposal that the revenues of the canals shall be devoted to the payment of the bounty or war debt before any of the improvements demanded by the public necessity shall have been made. There are many reasons why this should not be done, prominent among which are the following:

First. It is to be hoped the general government will refund to each State and locality the entire debt contracted for war purposes, thus placing the States upon an equal footing in defraying the expenses of the contest for national life.

Second. The Western and Northwestern States have not only contributed largely to our revenues

through the canals, as shown by the preceding tables, but, during the war, they devoted of their blood and treasure their full share to support the national cause. It would be unjust and unbecoming the policy of this great State to tax their products while seeking the markets through our canals for the purpose of paying the portion of such expense incurred by us.

Third. The debt is one which the people are pledge by a direct vote, and will pay, if necessary, by taxation. They will cheerfully submit thereto on condition they are hereafter to realize the full fruits of the contest in which the debt was incurred—a nationality purified and strengthened, and States enjoying reciprocal and mutual commercial intercourse.

Fourth. Before the several debts and liabilities to be paid from the revenues, shall have been discharged, the bounty or war debt will have been paid and extinguished in some one of the modes before mentioned.

While your committee would avoid all unnecessary impositions by taxation, they cannot so under-rate the patriotism and intelligence of the people as to believe they will prefer a policy which will violate the honor of the State and doom the canals to neglect and destruction in order to escape taxation, for the present, at the hazard of more certain and onerous taxation in future.

Your committee have arrived at the conclusion that the subject of imposing tolls upon railroads, and of compelling uniform rates of freight, are questions for legislative action, and that neither can properly be affected by a constitutional provision.

They ask to be discharged from the further consideration of the several resolutions and subjects referred to them.

All which is respectfully submitted,

E. G. LAPHAM, *Chairman*.
THOS. G. ALVORD,
GEORGE W. CLINTON,
ERASTUS S. PROSSER,
GEORGE M. BECKWITH,
WALDO HUTCHINS,
ELIAS ROOT,
JAMES A. BELL,
ELIZUR H. PRINDLE.

I concur in the preceding report except so far as it recommends that the care and management of the canals be intrusted to one Superintendent of Public Works, with four deputy superintendents under him, to be appointed by the Governor, by and with the advice and consent of the Senate.

M. SCHOONMAKER.

I concur in the preceding report except so far as it relates to the lateral canals and to the care and management of all the canals; in regard to which subjects I have expressed my views in a minority report.

TEUNIS G. BERGEN.

I concur in the preceding report except so far as it relates to the care and management of the canals, as to which I expressed my views in a minority report.

DAVID L. SEYMOUR.

Mr. LAPHAM—It is proper, I should state, in

submitting this report, that the members of this committee, as is already shown by the files of the Convention, in some of the details differ with the opinion or recommendation of the majority. One or two differ in regard to the mode of selecting a single superintendent, two others preferring three or four superintendents instead of one, and two members of the committee disagree with the majority in some of the financial views which are presented by the report.

The PRESIDENT—This report will be printed under the rule, and the committee is discharged from the further consideration of the several matters therein contained.

Mr. LAPHAM—I desire to add one other observation. During the progress of our investigation the Convention authorized a sub-committee to take some evidence at Syracuse. The sub-committee, of which Mr. Prosser was chairman, was appointed for that purpose, and they have taken, in addition, to the evidence taken before the committee, some evidence touching the sufficiency of the locks, and have made their report to the committee. I ask that that report, and the evidence they have taken, be published, together with the evidence taken by the committee.

The PRESIDENT—It will be printed under the rule.

Mr. PROSSER, from the same committee, read the additional report, as follows:

On the 8th of August, instant, the Convention passed the following resolution:

"On motion of Mr. Prosser, *Resolved*, That the Committee on Canals have authority to attend personally on Friday and Saturday of this week, or authorize a sub-committee of their number to do so, at such place as they think proper, to take testimony and make personal examination as to the capacity of the locks upon the Erie canal to do the business, and as to the capacity of the prism for larger locks."

In pursuance of such resolution, the undersigned were appointed to perform the duties therein stated; and as one of their number had previously been assigned by the Convention other duties at the city of Syracuse at the same time, your committee selected that place as the most appropriate and convenient to take the testimony and make the examination referred to in the aforesaid resolution.

On Friday, the 9th instant, your committee assembled at Syracuse, and in the evening took the testimony of James Clark, of that place, which they annex hereto; but for convenience the substance of Mr. Clark's testimony is here stated: he testifies that he has for over twenty years last past been engaged in taking care of horses employed in the towing of canal-boats; that his attention has been daily, during the navigable season of the canals, for this long period, called to notice any delays that occurred in the passage of boats at that place; that during the fall of 1860, 1861, 1862 and 1863, there was very great detention there, caused by the inability of boats to pass through the locks as rapidly as they came, there being three tiers of locks to pass boats on to that level going east, and only two to pass them off westward; that the crowds were great and frequent during the periods above stated; that as

the boats built the last few years were larger than formerly, it was impossible to pass them through the locks as rapidly as could be done several years ago—say in 1860 and 1861.

Early in the morning of the 10th day of August, your committee visited the lock, on the Erie canal, in the city of Syracuse; found boats busily engaged passing both ways. They took the following memoranda of what occurred in their presence: There was plenty of water, and no lack of attention on the part of the boatmen or lock-tenders; both locks were fully employed every instant, and the loaded boats were aided by the use of a fixed purchase, or pulley, upon the lock, furnished by the lock-tender, which facilitated considerably.

Time boat started to tow into lock.	Name of boat.	Time boat got through so that another could start to tow in.	Time actually employed to pass through the lock.	Cargo.
h. m. s.		h. m. s.	m. s.	
6 11 15	J. Barnes,	6 32 40	21 25	130 M ft. lum.
6 11 40	M. McDonald,	6 31 00	19 20	139 M ft. lum.
6 32 40	J. R. Race,	6 46 15	13 35	Light boat.
6 33 00	A. W. Sweet, ...	6 50 10	17 10	135 M ft. lum.
6 46 15	R. N. Owens, ...	7 10 00	23 45	110 M ft. lum.
6 50 10	A. H. Ladin, ...	6 59 30	9 20	Light.
6 59 30	Ed. Merry,	7 13 00	13 30	130 M ft. lum.

Thus seven boats were passed in one hour, equal to 168 in 24 hours.

The testimony of James Delamater, the lock-tender, was then taken, and is herewith annexed, and is briefly, substantially as follows: That there was a great delay in the years 1860, 1861, 1862 and 1863, at Syracuse, in boats getting through the locks, and he agrees with Mr. Clark, the other witness, that boats were there awaiting lockage half of the time for the fall of those years; that as the boats built within the past few years are rather larger, it takes more time to pass them through the locks than in 1860 and 1861; that from 150 to 170 boats daily is as many as can be passed through those double locks; that there is plenty of water, and the locks are well and faithfully attended. Your committee are of the opinion that it is entirely safe to rely upon the testimony of this witness. Attention is invited to one further statement that he makes: That for several days in the latter part of November, 1866, there was a great crowd of boats at that place (in this he corroborates the witness Clark), and as many boats were passed daily as could be, and that a true statement of what was then done he forwarded to the Auditor; a copy of that statement is hereto annexed, and it shows the number of boats passed through those double locks from the 23d to the 30th of November, 1866, inclusive (the days when the largest number were passed), was 1,269, or say nearly 159 daily.

Your committee are favored with a letter from the Hon. Lewis Seyle, now a member of Congress from the Twenty-seventh district of this State, addressed to one of their number, Mr. Prosser, in

the year 1861, fully corroborating the witnesses Clark and Delamater. Indeed, the prediction of Mr. Seyle that "should the business of the canal require the passing of more tonnage through these locks than was passed last fall, you must increase the capacity of the locks or otherwise be content with what was then done," has been singularly verified; for, as will be noticed by referring to the table herein of the number of new boats registered in the years 1861 and 1862, largely in excess of former years, accompanied by the fact of very high freights upon the canal, as appears by the report of the Auditor, and the farther fact that in those years there was less than the usual detentions by breaks in the canal, as appears by the recent report of the Canal Commissioners, yet, with plenty of water, a great increase of boats, an abundance of business, and the incentive to energy which high freights impart, the lockages in the fall of 1861, 1862 and 1863 were little if any more than in the fall of 1860, as the following table will show:

Lockages at Alexander's Lock, three miles West of Schenectady.

	May.	June.	July.	August.	September.	October.	November.	December.	Total.
1860,	3,922	4,263	4,606	4,703	4,892	5,380	4,524	147	32,439
1861,	3,716	4,101	3,823	3,781	4,349	5,386	5,925	99	31,179
1862,	4,392	5,061	5,376	4,635	5,260	5,247	4,517	489	34,977
1863,	4,596	5,092	4,083	4,409	3,441	3,915	4,166	369	30,071
1866,	2,710	3,124	4,637	5,104	4,568	4,607	3,990	1,142	29,882

Detention by break, season of 1861, 13 days 20 hours. Detention by break, season of 1862, 11 days 12 hours.

Detention by breaks for past ten seasons average seventeen days—see Commissioners' report to the Convention.

New boats registered for years stated.

1857,	329
1858,	255
1859,	206
1860,	403
1861,	619
1862,	850
1863,	771

SYRACUSE, April 5, 1861

Hon. E. S. PROSSER, Albany:

Dear Sir: In answer to your inquiry in relation to the Lodi locks, I have only to say that during the last two months of navigation last fall, the number of boats were such that rendered it utterly impossible to pass them without more or less detention; we had a full supply of operators, and each lock was manned with four energetic young men, who understood their business; a span of horses was kept upon the berme bank to facilitate the passing of boats through what is called the heel-path lock, but with all this, we were compelled to require boats to wait for their turn. Should the business of the canals require the passing of more tonnage through these locks than was passed last fall, you must increase

the capacity of the locks, otherwise be content with what was then done.

Very respectfully,

Your obedient servant,

LEWIS SELYE,

Contractor Section 8, Erie Canal.

From the report of the Auditor on trade and tonnage for the year 1866 the average cargo of boats eastward is stated at one hundred and seventy tons. Upon inquiry at the department your committee are informed that in making up this average the total tons arriving at tide-water by the Erie canal is taken and divided by one-half the lockages at Alexander's lock, the quotient is assumed as the average cargo. It will be apparent that in this way of arriving at cargo, the cribs of timber of very light weight and the small boats from the Chemung, the Chenango, the Genesee Valley and the Black River canals come in to make up the average so low as this.

From the annexed statement of the Auditor it appears the cargo of boats from Buffalo and Oswego for past six years gradually increased, and in the year 1866, in the month of November, from Buffalo, averaged two hundred and nine tons.

From the foregoing your committee arrive at the conclusion that the practical capacity of the Erie canal, with the existing locks, to pass property eastward from Lakes Erie and Ontario, to tide-water, may be stated substantially as follows: The canal opens on the average, on the 1st of May, hence the full season for shipment from those places from May 1st to November 16th is..... 200 days.
Deduct from this the average interruption to the navigation by breaks in the canals before referred to,.... 17

183 days.

Taking 160 lockages as the average daily one-half east, with average cargo of 200 tons, which is liberal, including lumber, ship stuffs, and other light property, and we have a daily tonnage from the lakes east of 16,000, Tons.
for 183 days is..... 3,228,000

But as this would fully occupy the canal with business coming from beyond this State, done with large boats, it is quite apparent that the cribs of timber and the small boats from the lateral canals will reduce the average cargo below 200 tons, and correspondingly reduce the total tonnage which can pass east in a season. Your committee are hence of the opinion that 3,000,000 of tons annually eastward is the full practical capacity of the Erie canal with the present locks; but with the present locks proposed and one tier only, they think the capacity will be very largely increased, even by horse power, and fully trebled if the business is done by steam; and that the prism of the canal is well adapted to boats 200 feet long and 23 feet wide, when improved, as is proposed by the committee on canals.

All of which is respectfully submitted.

E. S. PROSSER,
JAMES A. BELL,
A. B. TAPPEN.

Which was referred to the Committee of the Whole and ordered to be printed under the rule.

Mr. CHAMPLAIN, from the same committee, read a minority report, as follows:

The undersigned, from the Committee on Canals, respectfully

REPORTS:

That he wholly dissents from the article reported by the majority of the committee so far as the same relates to the management of the canals, and the financial policy to be inaugurated. So far as the management of the canals is concerned, the undersigned has already briefly stated his objections to the plan recommended by the majority in a report already submitted.

As to the financial sections of said report, the undersigned regards them as objectionable upon the following grounds:

First. They violate the faith of the State, pledged to the public creditors by the express terms of the existing Constitution.

The revenues of the canals, which are now pledged to the payment of the debts specified in the proposed sixth and eighth sections, are diverted to the extent of eight millions of dollars, and the payment of the said debts correspondingly postponed.

Second. The article, in the opinion of the undersigned, contains provisions under which a system of public improvements may be commenced which may require twenty years to finish, and an expenditure of many times the amount of the proposed limit.

That from the evidence taken before the committee, and the examination of the subject, the undersigned has failed to see any immediate, and certainly no pressing necessity for additional capacity in the Erie canal.

Some evidence has been given tending to show that temporary embarrassment in navigating the Erie canal has occasionally occurred at a point near the conjunction of the Oswego canal with the Erie, for a short period in the most crowded season of canal navigation, but that the embarrassment was attributable to some extent to lack of force and efficient management, and may be obviated at a comparatively trifling expense at the points named. That the general capacity of the canal is amply sufficient at the present time, and will be for an indefinite number of years in the future, is abundantly established by the concurrent testimony of those best acquainted with the subject.

Third. The undersigned fails to see in the form of said article those wise and stringent safeguards against improvidence and prodigality in expenditure which experience has demonstrated to be indispensable.

Instead of loosening the forms of restraint on these subjects in the organic law, the undersigned believes that every consideration of public policy demands they should be more stringent.

That since the article reported by the majority was considered in committee, a report has been submitted to this body by a majority of the Finance Committee upon this subject, in the reasoning and conclusions of which the undersigned fully concurs. The article so submitted by said

Finance Committee the undersigned understands to be in direct antagonism to the one proposed by the majority of the Canal Committee, so far as the same relates to finances and the application of the revenues to the payment of the debts and the improvement of the canals. There are minor provisions in said article from which the undersigned dissents; but it is unnecessary to incorporate them in this report, as they, together with a more detailed specification of the objections herein contained, may be stated upon the floor of the Convention.

M. B. CHAMPLAIN.

Dated, August 20, 1867.

Which was referred to the Committee of the Whole, and ordered to be printed under the rule.

Mr. SEYMOUR—In behalf of two members of the Canal Committee, I make a minority report pertaining, I would say, to the care and management of the canals.

Mr. SEYMOUR proceeded to read the report, as follows:

The undersigned members of the Committee on Canals are unable to unite in the report of the majority of the committee, and they therefore submit the following

REPORT:

They agree with the majority of the committee in the opinion that there are great and radical defects in the system of superintendence, care and management of the canals of the State. These evils have become so great as for a long time past to have attracted the attention of the State at large. They have induced great neglect in repairs and in the daily care and regulation of the use of the canals, and the public convenience has suffered largely therefrom. They have also seriously affected the pecuniary interests of the State. Large sums of money have been paid for construction and repairs and with very little advantage to the public interest.

The result to the State has been an unnecessarily large expenditure of the public moneys, and a very imperfect and defective canal management.

Two principal causes seem to lie at the foundation of these evils:

First. The want of one general supervising and directing power—a power which, while acting under the Constitution and laws, shall direct the whole canal system and be responsible to the people for its results.

Second. The imperfections in the application of the system of letting the work of construction and repairs of the canals. Under this system a practice has grown up which admits of fraudulent combinations that have wasted and still are wasting the public treasure in the most profligate manner.

The undersigned, in the hope of curing these evils, have united with the majority of the committee in the radical reform recommended in their report, of discontinuing certain officers and boards hitherto having the care and management of the canals, in constituting one head of the canal system and transferring the care and superintendence of the canals to one chief officer, to be called the Superintendent of Public Works, associated with four assistants.

But while agreeing with the report of the ma-

jority of the committee, as above indicated, the undersigned feel constrained to differ from it as to the mode of appointing these officers.

We recommend that the Superintendent of Public Works be elected by the people, and that such superintendent do have the power of appointing his four assistants.

The undersigned believe that the appointment of this high officer by the Governor is liable to very grave objections. The office of Governor, as the Chief Executive of the State, necessarily draws to it a very large and increasing patronage. It is unwise needlessly to enlarge it. By giving to the Governor the appointment of the Superintendent of Public Works, or the power of nominating him to the Senate for their confirmation, the patronage of the Executive will be extended to the entire canal system. It will be made indirectly to reach not only the very large body of subordinate officers in charge of the canals who will be appointed by the Superintendent of Public Works, but in a measure the numerous operatives employed upon them. The Chief Executive would soon be regarded as the ultimate source of power in the canal system, as he would have the power to name the individual who was to regulate that system and to appoint all the subordinate officers in charge. Thus would be created an active, organized political power, reaching through every quarter of the State penetrated by our thousand miles of canals under one head, and ever ready to act as that head might be disposed, for the perpetuation of its own power and for advancing the political interests of the Executive. The effect at all times on the selection of a candidate for the chief executive office would be prejudicial to the welfare of the State. Important interests, in regard to which a chief magistrate should be selected, it is feared would soon be overshadowed by the large patronage of the canals dependent upon his nomination. The office of Governor needs no such patronage to sustain it. Its power and patronage should continue to be of a general character, applicable to all the interests of the State, and not especially connected with one great and absorbing interest.

The efficiency and prosperity of the canals themselves would, in the opinion of the undersigned, be liable to be marred by removing their care and management from officers elected by the people to one officer appointed by an agent of the people. If there be any office in the whole range of official positions under that of the chief executive which should be elective by the people, it is that of the officer who is to have the care and management of the canals of the State.

The canals are the great avenues of internal trade. Every productive interest in the State is affected by their good condition and successful operation. The daily business of the masses of the people in large districts of the State is impeded or advanced according as the canals are negligently or faithfully managed. The yearly revenues of the State arising from these extensive works of internal improvement depend upon the same conditions. These matters reach the tax payers directly. By inefficient and bad management they will be subjected to increased burdens

from taxation, while their ability to meet them will be diminished. The judgment of the people at large as to the management of our canals may be generally relied upon as correct. The people will be vigilant in their observation regarding these matters, for they concern their daily interests. The Executive may not be so. His is a larger and more general supervision. If evils exist it will be the interest of the people to correct them, and although that must depend upon the action of political organizations, yet no party will dare to nominate men, whom the good sense of the people may reject for their incapacity or indisposition to faithfully manage the canals. By electing a Superintendent of Public Works he will be brought into contact with the people and made accountable to them as his immediate constituents. If the people hold this power of selecting this high officer they will at all times have in their hands the power to correct the evils of mismanagement, while the officer himself—the servant of the people—cannot fail to desire so to discharge the duties of his office as to commend himself to the approbation of those by whose suffrages he has been elected. It is impossible in a free government to remove its officers from political agitation and influences. But it is believed that the intelligence and good sense of the people will in the end better secure the faithful performance of such official duties as concern their important daily interests, than any other power.

If the Superintendent of Public Works is to be charged with their entire care and management, and he alone, as the head of our system of internal improvements, is to be held responsible for its successful workings, as is proposed by the committee, then it seems to follow as a legitimate result that he should have the power of appointing his assistant superintendents, as well as all other subordinates. He cannot have a fair opportunity for the exercise of his skill and abilities in the discharge of the important and multifarious duties of his high office, unless he be permitted to select the agents through whom he shall direct and manage the system in all its parts.

The undersigned therefore report the following section on this subject.

All which is respectfully submitted,

DAVID L. SEYMOUR,

August 20, 1867.

TEUNIS G. BERGEN.

§ 3. There shall be a Superintendent of Public Works, who shall be elected by the people at the next election after the adoption of this Constitution, and at the election in every eighth year thereafter, and he shall hold his office for eight years from the first day of January next after his election, and shall receive such salary as the Legislature shall prescribe. He shall be vested with the control of all matters relating to repairing the canals and keeping them in navigable order, and to such improvements and enlargements of the same as shall be authorized by law, not inconsistent with this Constitution; and he shall make such rules and regulations as are necessary for the navigation of the canals. He may be suspended or removed from office by the Governor, on the recommendation of the Commissioners of the

Canal Fund, for incompetency, neglect of duty or malfeasance in office, but no such removal shall be made unless he shall have been previously served with a copy of the charges preferred against him, and he shall have had an opportunity to be heard in his defense.

In case of the suspension or removal from office of the Superintendent of Public Works, or the vacation of his office for any cause, the Governor shall appoint one of the assistant superintendents, who shall be vested with the powers and shall perform the duties of the Superintendent of Public Works until such suspension shall cease or a successor shall have been elected and qualified.

Whenever the Superintendent of Public Works shall be removed from office as herein provided, or his office shall become vacant for any cause, a successor shall be elected at the next general election, who shall hold the office for the unexpired term thereof.

The Superintendent of Public Works shall appoint four assistant superintendents and all other officers necessary in the discharge of his duties, except the officers mentioned in the first section of this article. The officers appointed by the Superintendent of Public Works shall have such other powers and shall perform such other duties as shall be prescribed by law not inconsistent with this Constitution.

Until the election of a Superintendent of Public Works as herein provided the canals of this State shall remain in charge of the officers now in charge of the same, whose powers and duties in relation thereto shall be continued until such Superintendent shall enter upon the duties of his office.

Which was referred to the Committee of the Whole, and ordered to be printed under the rule.

MR. MAGEE—I rise to express my regrets that I cannot fully concur with my colleagues upon the committee, while I concur most cheerfully in the general remarks expressed in the report by the honorable gentleman who has just read it, that portion which refers to the financial ability of enlarging our locks and increasing the capacity of our canals without taxation or resorts to loans. I cannot concur, therefore, in that part, and I must dissent from it. There are some other portions which I do not fully concur in, and which I shall ask to present to the Convention on the first proper occasion.

MR. BECKWITH—I concur with the majority of the committee in all their recommendations, and generally in their conclusions, but at the same time I wish to say that I cannot indorse as correct the statements made by the Auditor to the Convention, for on a full and careful examination of them, I am satisfied that there are errors. Nor can I adopt as sound the rule which he has adopted, in casting interest, to show that the canals have proved profitable to this State to the extent of thirty-eight millions of dollars. The rule which he has adopted, in my judgment, is altogether unsound, and is calculated to mislead. With the exception of this single fact, I concur with the conclusions of the committee, and also in the argument founded upon them so far as it may be affected by a correct statement of the facts.

MR. CHURCH—I offer a resolution.

The SECRETARY proceeded to read the resolution as follows:

Resolved, That the report of the standing Committee on State Finances, etc., and the report of the Committee on Canals be made a special order for Tuesday next, to be considered in the order in which they now stand on the general orders, unless otherwise ordered, and considered from day to day until disposed of, unless otherwise ordered by the Convention.

Mr. CHURCH—I merely desire to say that this resolution has been offered after consultation with the members of both committees, and for the convenience of those who are interested in those reports, I offer this resolution.

The question was then put on the resolution of Mr. Church, and it was declared adopted.

Mr. MERRILL—I offer the following resolution:

Resolved, That debate on the article on corporations, etc., be limited to ten minutes to each speaker in Committee of the Whole, and five minutes in Convention.

Mr. MORRIS—I desire to add an amendment to the resolution of the gentleman from Wyoming [Mr. Merrill], to the effect that the chairman of the committee may be allowed to answer such questions as may be propounded to him by members of the Convention, and for this purpose he be allowed to speak more than once. Or, in other words, that he will be allowed five minutes at a time to answer each question that may be propounded to him on that subject by the Convention, and for that purpose I offer this amendment.

The SECRETARY proceeded to read the amendment as follows:

Provided, The chairman of the committee may be permitted, in answer to questions which may be put to him, concerning the subject under discussion, to be heard in explanation thereof.

The question was put on the amendment of Mr. Morris, and it was declared carried.

Mr. SEAVER—I move a still further amendment.

The SECRETARY proceeded to read the amendment as follows:

And that the Committee of the Whole be instructed to report the article to the Convention at two o'clock p. m., of this day.

The question was put on the amendment of Mr. Seaver, and it was declared lost.

Mr. GERRY—I offer the following as a further amendment:

Strike out the word "ten," and insert in lieu thereof the word "fifteen."

Mr. MERRILL—It seems to me this amendment is unnecessary. The Convention has now spent three days discussing a single amendment, and I think we are pretty well prepared to act on this article without any further long speaking.

Mr. GERRY—My single object in offering the amendment is to give opportunity to every gentleman to be heard in regard to the other sections of this report, which have not been considered at all. There are some five sections in this report, and we have only considered one, which is the least important of the whole.

The question was put on the amendment of Mr. Gerry, and it was declared lost.

The question was then put on the resolution of Mr. Merrill as amended on motion of Mr. Morris, and it was declared carried.

The Convention again resolved itself into Committee of the Whole on the joint report of the Committee on Currency, Banking, and Insurance, and Corporations other than Municipal, Mr. E. BROOKS, of Richmond, in the chair.

The CHAIRMAN announced the pending question to be the amendment of Mr. A. J. Parker, to the first section, as follows:

No consolidation of railroad corporations shall be authorized by the Legislature, when the aggregate capital shall exceed twenty millions of dollars.

Mr. ROBERTSON—As I stated last night, I have a few words before this amendment is submitted to this committee for their action, and will endeavor to compress them within the time which this morning has been allotted for each speaker, in the committee in regard to matters before them. And, sir, I could not allow an occasion of this kind to pass by, without entering my protest, in some thing more than a mere vote, upon what I consider to be a fundamental political heresy, and opposing with whatever strength of logic I may possess, the adoption of a principle into the fundamental law of this State, like that proposed now to be adopted. I shall not reiterate the argument which has been brought against this amendment, that it is transferring or anticipating the action of the Legislature, in the body which is to frame the organic law of this State, nor shall I undertake to enter upon any of those topics which have been discussed here in regard to local or personal jealousies or prejudices or biases in regard to the system of railways which communicate from the interior to the sea-coast throughout the length of this State. But, sir, I shall confine myself simply to stating a few propositions which I think cannot be frowned down by this Convention without violating the elementary principles of a republican government, and I am well satisfied that if this amendment is adopted into the organic law of this State, that five years hence we shall hardly dare to look each other in the face, and say we were present at a Convention where such an amendment as this was adopted. The principle that is embodied in this is, that capital cannot be allowed to be aggregated for the purpose of promoting the industrial interest and enterprise, and protecting and increasing the productiveness of the State, advancing it in wealth and power; that capital cannot be allowed to be aggregated beyond a certain amount; that the power arising from the combination and the accumulation of capital is so subject to abuse that it must be encompassed and confined within bounds, by the elements which form this republic of the State of New York, and it is for that reason that I oppose this amendment mainly and principally, because it was upon that ground it was first introduced and sustained. It is presented to us that fifteen or twenty millions of capital aggregated together is so despotic a power that it cannot be left to exercise its natural result on the interest, and the motives which operate upon the minds of men—that it cannot be left to that natural course, but must be

controlled by the very substance of the formation of the republic of the State of New York. It was a startling and unexpected proposition to me, for I had always read and heard that by every possible means the enterprise of this State should be stimulated by domestic resources, by capital accumulated within its borders, and by every branch of public power, and should be sustained by aggregated wealth. Carry this principle out, and where do we go to? This is confined to the system of railways of this State, but why should it not be carried to manufacturing purposes? Why should it not be carried to commercial operations? Why should it not be carried to every operation in which fifteen or twenty million dollars could be used for the purpose of advancing individual interests; and in advancing individual interests, advancing the interests of the public? Go beyond that—and why should we not carry it beyond enterprises in which fifteen million of dollars are employed and to the private property of individuals? Why should we not stop the accumulation of property beyond twenty millions of dollars (the amendment as it is now proposed to be adopted) in the hands of private individuals? Where are all the numerous books that have been written on political economy? Where are all the essays with which our newspapers have teemed, and which the eloquent voice of public speakers have uttered in regard to keeping capital free where other capital is free to operate upon a common field of action? If we are going to adopt this heresy in the Constitution of this State, farewell—farewell forever to the enterprise and energy and the industry of the State of New York, because if twenty millions is to excite this jealousy to-day, to-morrow it will be fifteen millions and so down to one million and one hundred thousand dollars. It may be a good and valuable doctrine for a people inhabiting an arid desert and living from hand to mouth by their daily labor, but it is a miserable doctrine to be established in a State like New York of immense wealth, productivity, and enterprise, governed by intellects which we are not ashamed to put in array, or in comparison with the highest intellects of the rest of the world. I shall say no more on that subject. It is in vain for me to preach upon this doctrine, if gentlemen cannot feel at once that capital is not to be controlled in its aggregation for the purpose of carrying on the interests and enterprise of the State of New York. If otherwise you must come down to the agrarian system, which will cut off the property of individuals, and reduce us to a poor and weak community which could engage in no enterprise which required capital beyond a small sum. But it is said that beyond that, railways are dangerous; that although private individuals engaged in other like enterprises will not abuse the power wealth gives them, by purchasing the Legislature or purchasing votes which will send tools of theirs to the Legislature, yet railways will control if aggregated to this extent. What is true of property in railways is true of any other species of property or industry. What is more, I cannot see how a

railway could do anything that a large manufacturing corporation would not do, or anything which owners of those numerous vessels that ply upon our waters of great value would not do.

Mr. CURTIS—In justice to the principle involved in this discussion, I wish, if possible, to lift it from the mire in Wall street into which it fell last evening, and place it upon great public grounds, where alone it is to be considered by this body. Whatever may be the wishes of Mr. Schell, the designs of Mr. Corning, or the intentions of Mr. Vanderbilt, whose names were drawn last evening into this discussion, the constitutional Convention of New York has only to concern itself with the public welfare, irrespective of the rivalries of combinations or the jealousies of private men. The principle of the amendment offered by the gentleman from Albany [Mr. A. J. Parker] is the peril of overpowering and grasping corporations, and the danger of monopoly. We are here, Mr. Chairman, to make an organic law. What is an organic law? In countries more fortunate than ours, where the Constitution is unwritten, where it is a body of precedents and traditions adapted to every changing aspect of public affairs by the predominant sentiment of the country at the time, as in England, one order of procedure will prevail. In this country, where the Constitution is a written instrument, that instrument is to be viewed in two lights. In the first place, it is an instrument distributing the various powers of the government. In the second place, it is a proclamation of principles which are to guide the legislation, which will act by the authority of that Constitution. And whenever, sir, there is a principle which is deeply rooted in the public mind, whenever from their study of history, and from their experience of human nature, from their knowledge of the tendency of power everywhere to aggrandize and extend itself, the people are persuaded that power cannot safely be lodged, except within certain strictly defined limits, then people in forming a Constitution or fundamental law, do most justly ordain the restriction which is the ripe fruit of their experience and studies. Now, sir, in the special case under consideration, we are told that this is a matter which had better be left to the legislation of the people. Sir, fundamental law is the act of the most supreme and original legislation which the people of any State can perform. Then, in regard to the consolidation and combination of great corporations, we are told that the results which are feared from the consolidation will inevitably follow from the mere power of combination. But it seems to me that the difference which the honorable gentleman from New York [Mr. Burrill] denied to exist between the combination and consolidation of corporations is as absolute and radical as the difference, in chemistry, between a mixture and a solution. The explanation of the gentleman from New York [Mr. Schell], in the course of the debate on Friday, was a sufficient explanation of this. He alluded to the delay during the last winter at the Albany bridge, the jar between the Hudson and Central railroads. That was an indication of that friction, of that sensitiveness of competition which it is desirable to the people of every great State should always

prevail where great corporations exist. I accept that as I accept all such phenomena, as an illustration of the necessary operations of the rivalry of competition, which you will always find where you only have a combination, but which never can exist where there is a consolidation. So the honorable gentleman from Westchester [Mr. Greeley] said he wished to be able to put his trunk upon the cars at New York, and have it delivered in Chicago; and he told us a plaintive tale of some tiles that were delayed on the way from that city to his farm. No one denies the advantage of consolidation, as no one denies the advantage of a paternal government; as in the city of Paris to-day, where you will find all the details of municipal order, a thousand fold greater than exist in many cities of this continent. But the question is, what price will you pay? Will you pay the price of despotism and Louis Napoleon for good order in your city? So it is perfectly clear that a consolidation of all the railroads in this country, from end to end, might be of certain great, and distinct advantage to the people. That is not the question. The real question is, what is the price you are willing to pay? Are you willing to pay the price of the necessary results that would ensue from that vast consolidation of all the capital invested in the railway transport of the land? Now, sir, to bring it precisely to the point. The only substantial argument I have heard upon this floor, as addressed to a Constitutional Convention of this State, is that a refusal of the permission of consolidation is merely a blow at the prosperity of the State and the city of New York, and it held that it must necessarily greatly paralyze the facility with which the harvests of the West are brought to that city. It is mainly a question of rivalry only between that city and the great part of Pennsylvania. I am told, and I have no reason to doubt, that the actual railway transport of grain from the West to the seaboard is at present greater through Pennsylvania than New York; that is the railway transport alone. Of course the greater bulk of transport through New York is with the canal and the railroad. Now, sir, I hold that nature herself has settled the question. It is not for us, it is not for any Legislature, nor for any other body to determine. Nature herself has interposed the capes of the Delaware and the Alleghany mountains as the great solution of this question; and this State having the canal already in its possession, having the descending grade from the lakes to tide water; the canal which is the great and constant regulator of this transport, and having also the railroad thereafter to the sea; not as in Pennsylvania over the Alleghanies, but as Providence has provided, through the valley of the Alleghanies. I claim it is beyond question that the prosperity of the State and port of New York in this matter, counting upon its commercial intelligence and enterprise, is already secured. There remains then, sir, the other question, whether the people of this State are so persuaded of the danger of these great corporations and consolidations, that they are willing to make this prohibition a part of the organic law. Now, sir, I presume no student of history, I presume no

scholar in political science will deny that what the great baronial power was in mediæval civilization, and what the great slaveholding oligarchy has been in our politics, the vast consolidation of capital will be in the future of this country if the people do not interpose; and while I am told, as I am, by gentlemen who know by experience upon the floor of the Legislature, that already the fear and the prejudice against corporations are so great that, during the last session of the Legislature, the great corporation of this State found itself checked and defeated upon every side in its efforts, and could scarcely hope to buy or to make—

Here the gavel fell, the ten minutes having expired.

Mr. EVARTS—I hope, Mr. Chairman, the amendment proposed by the gentleman from Albany [Mr. A. J. Parker] will not prevail. I agree with my friend from Richmond [Mr. Curtis] that we are to discuss and determine this question upon considerations quite superior to any actual juncture, and to any private interests or any personal hostilities that may be in the minds of members. Now, Mr. Chairman, I take this as an instance of the heresy prevailing, apparently, in the minds of many members of this Convention, as to our duty as a Constitutional Convention. I agree that we live in, and are to aid in providing a government for, a community that has vast interests, strong passions, prodigious power, and I believe in recognizing that condition of the community, and not desiring to cripple or dwarf or cramp that community, but in furnishing a government adequate to maintain itself, and yet to expand, to confirm, to enhance the prosperity of the community. Now this, Mr. Chairman, is, as distinctly as anything can be, a piece of *legislation*. It belongs to legislation. The consolidation of railroads may be a public benefit; it may be a public evil. The consolidation of railroads with fifteen millions of capital may be a public benefit. The consolidation of railroads with seven millions of capital may be a public evil. Yet we are to pronounce here now that fifteen millions or twenty millions shall be the limit or capacity of capital that can be permitted to unite in continuous lines throughout this State. Why, Mr. Chairman, what happened last night involves in the last degree of absurdity this proposition. We were asked for three days to fix for twenty years fifteen millions as the limit, and last night within fifteen minutes, a gentleman proposed twenty millions instead, and my friend from Albany [Mr. A. J. Parker] accepted it. Now, if this Convention may grow in fifteen minutes from fifteen millions to twenty millions, what may the needs of the State, what may the duties of the Legislature grow to during the next twenty years? The gentleman from Richmond [Mr. Curtis] says it is true consolidation has its undeniable benefits and advantages. He is right. It is the natural process and method by which capital may yield its best and largest service for the social needs. In other words, the State of New York in its position, in its relations to the rest of this great Republic, may demand those facilities that only combined capital can give, but he says we

must look at the price we pay for those facilities, the submission of our necks to a tyrant. He would have us understand that *consolidation* under Louis Napoleon beautifies and ennobles Paris but enslaves France. Now we are brought here to this sovereign remedy to protect the great State of New York against tyranny in every form, to provide that in one particular instance of the aggregation of capital only fifteen or twenty millions shall be allowed. In other words, it would seem that we are to fear in this capitalist, who has been alluded to by name, and in the particular form in which he exerts his influence and power, the coming tyrant who is to rob the State of New York of its liberties; and it is only by this limit, fifteen millions of dollars, that we can save the liberties of the State. I can understand a general proposition, though I shall oppose it, that no more than fifteen or twenty millions shall be permitted as a combination of capital—that overgrown fortunes and overgrown corporations should be treated as tending to inequalities, dangerous to liberty. Let us discuss the question upon the basis of reason and good sense. But let us not pretend a fear that the liberties of the State of New York will fall before the combination of railroad capital in the particular form of consolidation, and let us not think that (if these liberties are exposed by the progress and the power of money) we have saved them by this single obstacle.

Mr. DUGANNE—It was said by the gentleman who last spoke [Mr. Evarts] that this is a subject fittingly left to the Legislature. If it were a mere question of finance, or of combinations or consolidations to be prohibited or permitted by the Legislature, I should be heartily in favor of leaving it to that body for settlement. But, sir, I regard it as involving a principle which lies at the very base of our republican structure, and that is the principle which secures and protects individual enterprise, as opposed to all great systems of consolidated and monopolizing enterprise based on enormous capital. Sir, in the kingdom of Great Britain there is a system which has oppressed the people for ages, and is incorporated with the polity of the kingdom. It is upheld by the law of *primogeniture*, a law which establishes a class paramount over all other classes. Now, sir, what is capital, as consolidated in this country, but the *primogenital* principle made operative in a republic? Capital, sir, consolidated and combined in monopoly, descends and is transmitted from generation to generation with as much exactitude as the *primogenital* entail of property in a monarchical country. Mr. Chairman, we have read that in the old and purer days of the Roman commonwealth, the citizen Valerius, on being reminded that he had erected a house greater in magnitude and nobler in proportions than the dwellings of his fellow-citizens, this patriotic citizen, sir, in the true spirit of a republican, razed that house to the ground, that he might not be suspected of aspiring above his fellow-citizens. And we are told that the democratic citizens of Rome bestowed upon him, for that deed, the proud title of *Publicula*. Sir, it is the principle of overreaching and overweening

power, of any kind, that I would strike at, and which republicanism strikes at, as involved in these aspirations of monopoly and of wealth to hold themselves above the people and to tyrannize over them and their trade, their industry, and their prosperity. I contend that this amendment, in the words of the gentleman from Albany [Mr. Corning], is just and wise, because it involves this principle, that while co-operation should be protected as among individuals, it ought to be properly restricted when consolidated in the shape of great moneyed corporations.

Mr. CONGER—At the first blush, the proposition of the gentleman from Albany [Mr. A. J. Parker] seems to be inimical to all our ideas of free trade. Why, it is asked, should not capital aggregate itself for the purposes of public convenience? What limitations can be safely imposed to-day which would be adequate to-morrow? These and like inquiries which have been urged in this chamber are not so easy of solution, they do not have so ready and secure an answer. But I propose to look at the question in a different aspect. I wish to inquire into the motives which influence men in banding themselves together for such purposes as are contemplated in this discussion. What is the motive which induces capitalists to combine from time to time for the purpose of producing their magnificent schemes? Is it merely the public convenience or the public interest that they study? Are they so ambitious only to be the slaves and thralls of the public weal, that no other motive guides and controls their aspirations or their aims? I take it, sir, that on the principles of human nature of which we may take cognizance, these men have private ends to compass, and that while they profess to accomplish some great good to the public, in reality they are endeavoring to reach at some improvement of their own private interests. When you come then, to this question of the consolidation of railroads now specially before us, and view it in the light in which I seek to present it, what is to be accomplished by a further consolidation of any of the main roads of the State? Is there any greater economy of expenditure to be obtained in any such result? Are divers directions so expensive that the saving of one or two would be of great economy in the administration of our railroad system. All such notions as these would operate only as a lure to us in the investigation of the question. There is no economy gained by any such plan. Now, then, we further press this question. What are the hidden motives which induce men to seek to control all the lines of travel and of transportation of passengers and freight to and from the great commercial center of this continent? What would induce them to combine their capital and their influence, and to give all their time, in order that they might secure the control of all the avenues leading to the city of New York? In these days, and for the last five or six years, ever since the development of the power of paper money, we have seen the ingenuity of men and their capital exerted for the purpose of controlling and stopping at different points, in the way of transport to the city of

New York, large masses of goods, of grain or other commodities, subjects of speculation in the commercial center. May we not anticipate that if all the railroads leading to the city of New York were to be under the control of one set of men, that the same power and skill which was exerted by them for the purpose of capitalizing this immense amount of property, and securing the common results of all their schemes, would end only in this, that from time to time, as opportunities might offer, the markets of grain and flour, or other provisions would be engrossed? Sir, the directing spirit that may hereafter sit at the Central railroad board of New York, capable, in the first place, of aggrandizing itself by this vast accumulation of capital, would, from time to time, as opportunity offered, suspend the transportation of freight at different points, so as to have a full monopoly of the provision market of the city of New York. I do not apprehend that any great injury to the public would follow from any attempt, if ever made, to stop the transportation of passengers, but I imagine that in such times as these we might look very seriously at the possible consequences of monopolizing the provision market of the city of New York. I will not say that such an evil as this is now upon us, although I think gentlemen familiar with the state of the market in the city of New York, for the last four or five years, especially the grain and flour market, must know that such practices have been tried, and great public mischiefs have followed the aggrandizement by private speculation of private interest. I do not think the occasion is so imminent as to justify us here in saying that we will not suffer capital to be aggrandized or accumulated beyond a certain limit. What I shall propose is this, that we shall secure now and forever the transportation of freight and persons from one railroad to another in this State, as it is not now adequately secured. An impression exists in the minds of many men that the general railroad laws of 1850 have secured such a result, but when they come to examine the law carefully, they will find that it only applied to crossings or intersections of railroads with each other. It only requires railroad corporations to furnish switches, turn-outs, and other mechanical contrivances and appliances of that kind. There is no provision regulating the transportation of persons and freight so as to prevent inconvenience to the traveling public and danger of conspiracy against the markets of the State. I desire to provide permanently for such desirable ends as these, and the effect of an amendment such as I propose to offer, if it shall meet the approbation of this committee, will be this. We will not incur ourselves with a provision such as is pressed by the gentleman from Albany [Mr. A. J. Parker]. We will not say that twenty millions is to be the limit where fifty millions might be a very inadequate limit in ten years, for I have no doubt the accumulation of capital within the State of New York within that time will be such as practically to make fifty millions then what twenty millions are now. But by securing the easy transportation of freight as well as of passengers, we may best take away

from those who seek to aggrandize their own interests and to consolidate the travel and the transportation of the State, the only motive that can actuate them in any such doubtful schemes, that of private gain through future combination. I submit this amendment.

The SECRETARY proceeded to read the amendment as follows:

The transportation of passengers and freight through and from any railroad crossing or uniting with any other railroad in this State, on just and equal terms of compensation shall be secured by law.

The question was then put on the amendment of Mr. Conger, and it was declared lost.

Mr. VAN CAMPEN—I offer the following amendment:

Strike out all after the word "Legislation," in Mr. Parker's amendment, and insert:

"Of parallel or competing lines, nor any but continuous lines, and no consolidation of any corporations should be authorized except by general law."

Mr. VAN CAMPEN—For myself I can see no objection to the consolidation of the capital of the State of New York on any of the continuous lines of this State with lines extending further into the West—for instance, through the State of Pennsylvania and Ohio, or any other Western States reaching to the points in the great business centers of the West, but I can see a very great and a very grave objection to the consolidation of parallel lines in this State, and I can conceive of no danger arising to the interest of this State from any other consolidation except that, but a very great advantage. It seems to me that no business man, looking at this proposition, can for one moment object to such consolidations, for they must lead to advantage to this State, and there can be no fear of any consolidation except the one which is intended to be obviated by the amendment I have just offered. The convenience, cheapness, and every advantage which can be got from continuous lines will be secured by a consolidation or combination of such lines running out of the city of New York. A competition arising between these long lines will save the community from any disadvantage which might occur if parallel lines were consolidated. If the New York Central and the Erie, and the Pennsylvania Central and the Baltimore and Ohio were combined, then the people would have to submit to such exactions as those lines would make; it would be almost impossible to reach them by legislation; you could hardly frame any provision so strict but the combined capital of those roads would be able not only to override it, but to procure any law they desire, or to prevent the passage of any law that would interfere with them; and it is against such combination we should provide, and which it is the highest duty of this Convention to provide against.

Mr. DALY—I am in favor of the amendment proposed by the gentleman from Cattaraugus [Mr. Van Campen], and am opposed to the original amendment proposed by the gentleman from Albany [Mr. A. J. Parker]. I am in favor of the former for the reason that it comprehends

the only feasible thing it is possible to do. Consolidation of competing lines might be, and probably would be, prejudicial to the public interest. We have two great through routes in this State, the Erie road and the Central in connection with the Hudson River and the Harlem. All railroads are monopolies. They charge as high a rate as is consistent with the competition by which they are surrounded, and were these two great through routes to be consolidated, we might have reason to apprehend that the public interest would be prejudiced; but so far as respects through routes, I have heard no reason assigned in this body why they should not be consolidated. The unification of the great routes of travel, whether they relate to the carrying of persons and property, or to the communication or transmission of intelligence by telegraph, is one of those results which is inevitable, and toward which everything is tending. It is demanded by the wants of our advancing civilization, and it will be brought about for the reason that it is the public interest that it should be. I have heard no reason assigned against it, except that it would give the control of the political interests of this State to a gigantic corporation, that would have the means, the disposition, and the motive to corrupt the Legislature. I admit it. It would be so, and it will be equally so whether these roads are consolidated or combined. This is shown by what the gentleman from Genesee [Mr. Wakeman], told us on Friday last, that the Central railroad had carried two measures for the enlargement of its rates of fare, through the Legislature, which the Governor vetoed, at a time when it divided eight per cent upon its capital. Now, sir, whether these two roads, the Central and the Hudson River, and the Harlem are consolidated or combined, is, in my judgment, wholly immaterial. They can do indirectly what this provision would forbid them doing directly. So far as regards the political influence of such a body upon the State, I have but one suggestion to make. I have always heard, but do not know whether there is any truth in it, that the management of the great Central road was in the hands of gentlemen favorable to the interests of the democratic party, and that they wielded the power of that great corporation for the benefit of that party. If that be true, what has been the result? Since the Constitution of 1846, we have had nine governors, and but one of them has been of the democratic party, so that if the influence of this large road has been used to affect the political sentiment and action of this State, it has been attended with no result prejudicial to the interest of the State, at least in the view of those who constitute the majority in this Convention, and who have been during that period of time the majority of this State. I favor, therefore, the amendment of the gentleman from Cattaraugus [Mr. Van Campen], because in my judgment, it is the only thing that is feasible, and I have heard no reason assigned why we should stand in the way of a movement that is inevitable throughout the whole of this country, until there shall be a unification of the great routes from the city of New York to the city of San Francisco.

Mr. J. BROOKS—I see no reason why the opponents of this measure should not accept the amendment which the gentleman from Cattaraugus [Mr. Van Campen] proposes. For my own part I would rather there were no such provision at all in the Constitution, but as men must act practically, and in the divided state of this house—apparently equally divided—it seems to me wise on the part of the opponents of the proposition of the gentleman from Albany [Mr. A. J. Parker] to follow the lead of the gentleman from Cattaraugus [Mr. Van Campen] and accept his proposition. My reasons for this are: first, that I feel that if the proposition of the gentleman from Albany [Mr. A. J. Parker] succeeds it is a most fatal stab to the growth and prosperity of this State, in its contest which it is to have with the other States and with the new Dominion of Canada in the north, and it is not only a blow at the consolidation of the Hudson and Central roads, but it is a blow to various other projects and schemes which are of high advantage to the State, especially to the constituency which I, in part, represent. There is now going on a struggle in the city of New York for a railway in order to reach Montreal. We have no direct communication from the city of New York with Montreal, nor direct or immediate communication with Canada. The Harlem road, as I understand it, has made some arrangement with the Vermont roads, if I recollect, via Bennington, and the New York State line for a continuous line from New York to Montreal, the effect of which will be to consolidate the trade of Canada in no inconsiderable degree upon the city of New York; and this proposition of the gentleman from Albany, if it succeeds, is a direct and fatal blow to any such consolidation as that, and forbids it here, not for one year, as is proposed in the Legislature, but for twenty years at least to come. There is another proposition of consolidation, which we have in very high favor, and which must succeed in order to enable the city of New York to keep the trade of the West, and that is the consolidation of the New York and Erie railroad with the Atlantic and Great Western, on its broad gauge from Salamanca to the city of St. Louis. I have before me, but I have not the time to state them, abundant statistics which show that the Pennsylvania road has really taken from us in tonnage and passengers a very great amount of transportation, and we can only save to the city of New York this tonnage and these passengers by a consolidation of the New York and Erie with the Atlantic and Great Western from Salamanca on to Dayton, and from Dayton on to St. Louis. But this proposition of the gentleman from Albany [Mr. A. J. Parker], if it succeeds, forbids this consolidation, and strikes a fatal blow at it, I repeat, not for one year but for all coming time, at least for twenty years, and it is a grant upon the part of this Convention, a donation and an encouragement to the city of Philadelphia, and to the city of Baltimore to exert all their power and influence for the consolidation of all this freight there. Why this affright about consolidation? The city of Chicago, which has sprung up out of a marsh

within the recollection of all gentlemen here upon this floor, and where the land within my memory was not worth over a dollar or a dollar and a quarter an acre, has grown to be a magnificent city, a city of palaces, a city of churches and stately habitations, by the growth of railroads, and the consolidation of railroads. The Northwestern road has from twelve to fifteen hundred miles of concentration in the city of Chicago; one line alone stretching from Council Bluffs, four hundred and ninety-five miles to the city of Chicago, and the policy of the people of Illinois throughout, in order to build up their great city, has been that of consolidation and concentration of capital leading to the city of Chicago. The Illinois Central railroad, running from Chicago to Cairo, and from Chicago to Dunleith, is over seven hundred miles long, a concentration of railroad capital cheerfully given by the Legislature of that State, and yet the people of Illinois are not enslaved, they are not fearful of their liberties. The people of Illinois are not fools enough to embody in their organic law—to exist in it, irrevocable and uncontrollable for twenty years—a provision which forbids the consolidation and concentration of its capital for the purpose of bringing to the city of Chicago the trade of the great Northwest and the Pacific. The fight between the New York Central and the Hudson River railroads—this contest with Vanderbilt, as it is called, a man who is now seventy-two years of age, and who must naturally, in the course of time, die in six or eight years more, when his property will be diffused among twelve children, and be scattered to the winds—this hostility to him must not be embodied in the organic law, in hostility to the interests of the people of this great State. Nothing can be more unwise, than the principle would be, if it is established, that there shall be no rich men in the State of New York, no Vanderbilts, no Cornings, no Magees, no Opdykes. If this principle is carried out through the State, it should reach both tongue and pen. There should be no men of eloquence in this State, no men who can write, no Greeleys, no Cassidys, no concentration of brain or anything with the pen and tongue, which are far more powerful in this State than any Vanderbilt; or any organization Vanderbilt can create in the remaining eight years of his life. I trust this Convention will not adopt in the organic law any such proposition as this, and in order to avoid it, I will cheerfully follow the lead of the gentleman from Cataraugus [Mr. Van Campen] and accept his proposition.

Mr. BEADLE—If anything is to be gleaned from the phraseology of the amendment proposed by the gentleman [Mr. A. J. Parker] it seems to me that it is a thrust rather at corporations in this State than that it is calculated to benefit or protect the people at large. In short it seems to me to be carrying out that peculiar theology of the times which asserts that corporations are bodies without souls, and hence must meet their retribution here. Why, the time has been in this State when a man connected with a corporation, even as a director, could live a comparatively peaceful life and go down to his grave enjoy-

ing to some extent at least, the respect and confidence of the community where he lived. It was even so, sir, that a director in a corporation in this State was not looked upon as a suspected criminal or an unconvicted felon, but not so now. Why, the very fact that a man sees fit with his own money to purchase stock in Wall street at some thirty cents on the dollar and by his peculiar skill and management make the stock of that corporation worth one hundred cents on the dollar, he must be arraigned on this very floor, and thrusts made at him personally, because, forsooth, he may be about to buy some other stock, and, by a peculiar stroke of management in railroad corporations, bring that up, as I, for one humble individual, trust he may, to be worth a hundred cents on the dollar. Sir, after this three and almost four days' discussion, I do not propose to say one word upon the propriety or applicability of this proposition of the honorable gentleman from Albany [Mr. A. J. Parker]. It may be that the purpose sought may not be accomplished even by the means proposed by this; or, if accomplished, the end may not be such as the good people of this State seek. But, sir, I would like for a moment to refer to the examples which have been set up as warnings here before this committee; for oftentimes, sir, examples are more effective than stable and weighty arguments. And, first and foremost, that much abused and often referred to State of New Jersey has been brought here to view; and we have been shown that State ridden and deprived of social and religious liberty by corporations of her own creation. New Jersey is used to this kind of treatment; often in derision has she been called the State of Camden and Amboy, and yet her people—her good, solid citizens—care little, very little, for this. One of the smallest States of the Union, with not more than two-thirds of her area susceptible of being devoted to agriculture, she has placed herself, by the aid of her location and corporations, as a power in the Union. Strip her of what her corporations have made her, the wealth and position she has obtained through them, and where would New Jersey be to-day? Pennsylvania, by eminence the Keystone State, has been brought here, and a picture hung up before us in dark and somber colors by the honorable gentleman from Onondaga [Mr. Alvord]; and in the darkness in which he places his picture he fain would see that she was tied, in his emphatic and figurative language, neck and heels by railroad corporations.

Mr. ALVORD—Those were not the words.

Mr. BEADLE—Now, with his permission I would like to have that picture placed in a little different light, or, rather, I would like a little more light thrown on this subject. Pennsylvania, if tied head and foot by railroad corporations, appears to be entirely ignorant of the fact. What seemed to him in his dark picture to be a head and heels in close but unnatural proximity, bound by railroad iron, I think, with a proper light thrown upon it, will appear to be her mines of coal and hills of iron; and what the gentleman mistook for cords that bound her uneasy members together will be found to be long lines of railroad cars loaded with coal and iron, by which she is put-

ting the whole North under tribute to-day. Yes, sir, Pennsylvania, seated upon her hills of wealth and controlling one of the great staples of the country, cares not for this, or that, or the other remark about her neck and heels. She is ready to dictate terms to the steamship interest as well as to the whole North depending upon her for their coal, and to a great extent for their iron, but what appeared to be the crowning act of all was the act of consolidation whereby connecting lines of railroad from the Hudson river to Lake Erie were made one. It was quite new to me that the Legislature occupied such position in the minds of the community as evinced in the contumely and the vituperation given them by gentlemen here. I had never heard the first stockholder complain of that action; I had never heard that the people of the country through which that line of railway passed were injured by that act of consolidation. It would seem from this proposition, and the discussion that has followed its introduction, that this act consolidating these roads is eminently disastrous to the country through which this line passes, and robbing the inhabitants of the last vestige of civil and religious liberty, and is held up as a warning to this Convention to look well after corporations, and inhibit by positive provisions in the fundamental law all power and privilege for future acts of consolidation. But, sir, is the fact as alleged? Has the consolidation of the railroads forming what is now known as the New York Central railroad been fraught with evil to the people of this State, or prejudicial to their rights or interests? It has been my fortune, sir, to travel the length of that road. I entered into its western terminus, in that city sitting in all her pride upon the shore of Lake Erie, but failed to see the blighting, blasting influences of that act of consolidation; and as I rode along through the agricultural district, second to none in these States, I failed, as every one must fail, to see those blighting influences; and as I passed through the numerous villages, with their glittering spires, the bright exteriors of the churches, the groups of happy faces of her citizens at every station, I could almost imagine that this hardy yeomanry who met my gaze were still, to some extent at least, possessed of civil and religious liberty, and in those churches whose spires pointed heavenward there might still be some vestige of religious liberty left. Sir, I look upon this, as I said at the outset, but as another thrust at corporations—another attempt, sir, but a vain attempt, as every such attempt will be—made to dissever power from wealth. As well might you attempt to separate attraction from matter or gravity from ponderosity as to dissever, for good or for evil, power from wealth.

Mr. PAIGE—The gentlemen who have presented their objections to this proposition of the gentleman from Albany [Mr. A. J. Parker] I think entirely misapprehend the effect of consolidation. We derive the same benefits in the continuous transportation of property and passengers from the intimate connection of connecting railroads that we would derive from their consolidation. The difference between the two systems of railroad transportation is that by the

intimate connection of connecting roads under mutually beneficial and equitable arrangements, we have all the benefits of a consolidated road without its evils, and especially the mischief of a centralization of a great money power in the hands of one board of directors. If we deny consolidation, the idea that inter-State commerce will be in effect prohibited, or that the commercial interests of the State and city of New York will be prejudiced, are mere illusions. Doubtless the consolidation between Albany and Buffalo has operated beneficially; but, sir, a consolidation between Buffalo and New York, of both of the two great rail trunk lines, or only of the Central line, will, in my judgment, be injurious to the commercial interests of the people of this State and of the city of New York. The New York Central railroad company, as now operated by one separate board of directors, avails itself of the benefits of water transportation on the Hudson river, a much cheaper transportation than by rail. Consolidation will to a great extent, if not wholly, deprive the State and city of New York of these benefits. The unification and consolidation of the Central with the Hudson River and Harlem will draw to the consolidated road the entire freight, or the greater part of it, at higher rates for transportation than those charged when the freight is transported by the river. And by either plan of consolidation, of the two parallel lines, or only of the Central line, the State and city of New York will be deprived of the benefit of a free competition between the two great lines, and between the Hudson River railroad and the river, a benefit they now have under the present system of running these lines. I cannot see any force in any of the objections to the amendment of the gentleman from Albany. I am convinced that consolidation will be specially prejudicial to the city of New York, and I have insuperable objections to placing the exclusive control of a great consolidated company, embracing the roads between New York and Buffalo, in one board of directors, and possibly in the hands of one man.

Mr. LAPHAM—I am in favor of the amendment offered by the honorable gentleman from Albany [Mr. A. J. Parker], and I prefer it to the amendment of the gentleman from Cattaraugus [Mr. Van Campen]. With reference to the proposition, that this is not a proper subject to be considered by way of constitutional amendment or provision, it is sufficient it seems to me, to say that we are here for the very purpose of ascertaining and determining what restrictions are proper upon legislative action. It is one of the leading subjects of our delineations, and in this connection, and as part of the article relating to corporations, it seems to me entirely legitimate and proper that any restrictions, which are deemed essential upon the subject of legislative action, in regard to corporations belong to the sections of this article. The gentleman from New York [Mr. Burrill], who spoke on Saturday, adverted to the rapid increase of railroad facilities across this continent, and to the great benefits which would be prevented if provisions of this description were incorporated in the Constitutions of the States. Now, sir, it is not in a spirit of opposition to these improvements that I advocate the amendment of

the gentleman from Albany [Mr. A. J. Parker.] I am glad as any person can be to see these facilities multiplied. I have no doubt they will multiply, and I hope to see them multiply until they stretch a net-work of iron across this continent, from ocean to ocean, that shall bind the States indissolubly together forever. But I would have the tie that binds them together, that of mutual interest, of reciprocal benefit; I would avoid the great and alarming danger of accumulated capital and concentrated corporate power in the hands of a few individuals. I remember well the interest with which I used to read those memorable debates in the Congress of the United States, when the great men of the Democratic party, following the lead of the patriot Jackson, made the walls of the Senate chamber ring from month to month with their reiterated warnings to the people of this country to beware of the overshadowing tyranny of a great moneyed corporation. It is this evil of great corporate power which I would avoid and guard against by constitutional provision. Associations, voluntary organizations, to make these routes beneficial, will be dictated by the common interest of all and secure to the public all their rights. Combinations when thus formed, as long as they act honorably and act wisely, secure to the public all the advantages which can be secured from corporate power, and whenever combinations become corrupt or seek to injure the interests of the public, by a great natural law, they fall to pieces; the men who originate them disagree with each other and they are dissolved, and when the individuals die their arrangements pass away with them. But, sir, once put into form of corporate power this aggregate of capital and this consolidation of influence, and it never dies. No matter how corrupt, no matter how much it may impose upon the rights of the masses, there is no mode by which it can be terminated. But, sir, gentlemen will say the Legislature have the power of repeal. There is involved in this question, Mr. Chairman, another question, the question whether you can trust the Legislature to exercise this power against the overshadowing influence of these institutions. A word farther, by way of illustration. I have adverted to the opposition of General Jackson and his friends to the creation of a great moneyed corporation. The danger was, as they believed, that that aggregate capital in the hands of a board of directors would prove dangerous to the interests of this country, and would control the legislative departments; and yet, what do we see now? We see the same capital, multiplied a hundred fold, in the hands of persons who are the officers of corporations, and nobody fears any evil results to the community from their existence. The capital is now diffused through a multitude of hands. It is not centered in one single body of corporators, and nobody apprehends any such danger. So the railroad capital of the country, in a multiplicity of corporations acting in concert for the purpose of accommodating the public, and for the purpose of promoting their own interests, may combine the entire business of this country with safety to the public. But the people of this State, and of every other State, should watch, and beware of

the day when this growing and increasing power is to be placed in the hands of a few individuals, and in the form of a corporate franchise.

Mr. A. J. PARKER—I shall oppose the amendment of the gentleman from Cattaraugus [Mr. Van Campen], because it does not reach the evil that I would avert; it protects against some wrongs that may be done, but not against the whole. And here let me say, sir, for I have listened carefully to what has been said this morning by those who oppose my amendment, I cannot agree with the gentleman from Chemung [Mr. Beadle] who says he delights to see a man enter Wall street, and purchase the stock of a corporation at thirty cents on the dollar, and so manage the operation as to raise it to par. I cannot agree with him in that.

Mr. BEADLE—The gentleman from Chemung said he liked to see a man by his skill and superior management raise the value of the stock.

Mr. A. J. PARKER—By skill and superior management in what? In stock-gambling, in Wall street operations, in manipulation of that and other stocks? How much better would it be to see that stock raised to par by good and practical management of the road, rather than by the operations of a Wall street speculator. Does not my friend know that when men go into Wall street to gamble in stocks and control these great corporations for the purpose of doubling their money they make as much by depressing as by raising the value of stock, by "bearing" as well as by "bulling" the stocks in the market, and if it be a benefit outside, that the stocks should be raised, it is equally a wrong to others outside, that they be depressed for the purpose of making money out of them. I do not intend again to argue this question, and to show the very great wrong that would be done to minority stockholders, and the very great injury that would come upon the public by allowing continuous lines to consolidate. I think I have shown it heretofore satisfactorily, and that others have also done so upon this floor. I merely rise to say, that I cannot support this amendment. It does not answer the purpose, it is not such a restriction as we ought to place upon the Legislature, and I hope it may be voted down and the original proposition sustained.

The question was put on the amendment of Mr. Van Campen to the amendment of Mr. A. J. Parker, and it was declared lost, on a division, by a vote of 40 to 47.

The question was then put upon the amendment of Mr. A. J. Parker, and it was declared carried, on a division, by a vote of 49 to 44.

Mr. VAN CAMPEN—I move a reconsideration of the vote, and that it lie upon the table.

The CHAIRMAN—Under the rule of the committee it will have to be taken now.

Mr. VAN CAMPEN—I ask that it lie on the table.

The CHAIRMAN—The Chair will state that, under the repeated decisions of the Committee of the Whole, the vote on a reconsideration must be taken at the time.

Mr. VAN CAMPEN—I withdraw the motion.

Mr. BELL—I offer an amendment.

The SECRETARY proceeded to read the amendment, as follows

Amend the first section by adding thereto, "The capital stock of all corporations organized under the provisions of this article, shall be fully paid up in cash, and all such corporations now existing, or that may hereafter be formed shall be required to make annual statements to the Secretary of State, showing in detail their assets and liabilities, and their income and expenditures."

Mr. BELL—I will only say that our present laws afford great facilities for the formation of corporations, but provide no system by which they shall account to any officer or the people for the use or abuse of those privileges. This is to remedy that defect, and to provide by a constitutional enactment that their capital stock shall be paid up in full. If they choose afterward to acquire property, they may do so, by purchase or negotiation.

Mr. ALVORD—Will the gentleman permit me to ask him a question? I will ask him whether the effect of his amendment is not to repeal the present existing railroad law of this State?

Mr. BELL—I don't know that it is. The present law permits such stockholders to pay in installments. As I was saying, the amendment requires that the capital stock of these corporations shall be paid up in money, and it shall not consist of a single oil well, or territory that is entirely worthless, by which the community may be swindled out of large sums of money. It also requires that, an annual statement or report shall be made from each of these corporations to some State officer and published, that the community may see from a perusal of that report the condition of that company or corporation, and that we shall not continue the facilities that now exist for swindling the people of the State out of their money with stock of worthless corporations. I think, sir, the amendment sufficiently explains itself, without any further explanation from me. I hope it may be adopted.

The question was put on the amendment of Mr. Bell, and it was declared lost.

Mr. MONELL—I desire to amend the first section.

The SECRETARY read the amendment, as follows:

Amend section one by adding thereto as follows:

"Provision shall be made by law requiring all corporations created by special acts since the first day of January, one thousand eight hundred and thirty, to form under such general laws as now are, or which hereafter may be passed."

Mr. MONELL—The section now under consideration in committee provides that corporations may be formed under general laws, but shall not be created or amended by special act. In the Convention of 1846, Mr. Loomis, the chairman of the committee to which the subject was referred, reported a section substantially like the section now under consideration, providing for the incorporation by general laws, and prohibiting the Legislature from passing special acts of incorporation. In a very able report submitted by Mr. Loomis, at the time, in speaking of the reasons for calling the Convention of 1846, he observed that the people had seen a system existing by which the government had granted to particular

individuals special privileges which had been refused to others, contrary to the great principle of equality among men; and after reviewing at great length, and with much ability, the reasons in favor of the adoption of the section reported by him, he closed his report by saying that the principle was democratic; but when these privileges were limited to the few, when special privileges were granted to some and denied to others, it was opposed to every principle of democracy. The section, as reported by Mr. Loomis, underwent much discussion in the Convention, and finally the section was adopted, as it now appears in the existing Constitution. Upon the suggestion that it was not unsafe to confide to the Legislature a discretionary power to grant special acts of incorporation in such cases as, in the judgment of the Legislature, the object could not be attained by a general law. Since 1846, and especially in the years 1848 and 1849, a very large number of general acts providing for incorporation have been passed. In 1848 acts for the incorporation of benevolent societies, bridge companies, gas-light companies, mutual insurance companies, plank-roads, railroads, scientific societies, telegraph companies, manufacturing companies, mechanical and chemical companies, mining companies and missionary societies; and in 1849 banking associations, insurance companies, joint-stock companies, etc. From 1846 down to 1850, very few special acts of incorporation were granted; the Legislature having assented to and adopted the suggestion contained in the Constitution of 1846, that they should not grant special charters where the object could be attained by general law. During that period most of their legislation was in reference to the amendment of special acts of incorporation, and not in granting original acts of that character. But in 1859 the supreme court of the first district, in a decision afterward affirmed by the court of appeals, declared that the discretionary powers vested in the Legislature could not be reviewed by the courts; and from that time to the present time a very large number of special acts of incorporation have been granted by the Legislature in cases where it would be difficult to see that the object could not have been attained under the general law. It was undoubtedly the intent of the framers of the Constitution of 1846, that the Legislature should be inhibited in the granting of special acts of incorporation where the object could be attained by general law. How wisely any discretion on this subject was lodged in the Legislature, it would not be difficult to determine. It has been said upon this floor, in regard to the uses or abuses of legislation, that any such discretionary power was not wisely left with the Legislature. The remedy which, in the judgment of this Convention, is to be applied to correct the abuses which it is charged have from time to time crept into our Legislature, is, among other things, to compel them to pass general laws, and to prohibit their passing special laws of incorporation, or, indeed, of any kind. Now, I desire to go a step further, and I desire that this Convention shall go a step further, and that they shall by proper constitutional provision, preserve uniformity of law in its application to all corporations, whether created

under general laws or by special acts. The general acts of incorporation which have been enacted since 1846, contain provisions permitting special corporations to come in and form under those general laws. I, sir, would make it compulsory. It may, however, be said that to compel chartered corporations to form under general laws, would be an infringement of some vested right which they may have acquired under their acts of incorporation. There is no such thing as a vested right in a corporation since 1828. As far back as that year it was provided in the Revised Statutes that "the charter of every corporation that shall hereafter be granted by the Legislature shall be subject to alteration, supervision and repeal in the discretion of the Legislature;" and, sir, every special act of incorporation that has been granted by the Legislature since that time, and nearly all general acts, are made subject to the provisions of this section in title three of chapter eighteen, article three, part one, Revised Statutes. Therefore, sir, there cannot be any doubt that the Legislature have an entire control over every corporation which has been created by law, and this power has been frequently recognized by our courts as existing in the Legislature. Now, sir, while we are engaged in the creation and formation of the organic law of the State, it seems to me to be wise to compel the Legislature to enact laws that shall require all existing corporations which have been chartered by special laws to form under such general laws.

The question was put on the amendment of Mr. Monell, and was declared lost.

There being no further amendments, the SECRETARY proceeded to read the second section, as follows:

SEC. 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

Mr. HITCHCOCK—I offer an amendment.

The SECRETARY proceeded to read the amendment, as follows:

Strike out the two first words of section two, "dues from," and insert instead "the debts and liabilities of;" so that it will read, "The debts and liabilities of corporations shall be secured by such individual liabilities of the corporators or other means as may be prescribed by law."

The question was put on the amendment of Mr. Hitchcock, and it was declared lost.

Mr. HALE—I move to strike out the word "and" in the second line of the second section, and insert in the place thereof the word "or." The object of this amendment is, I think, pretty obvious from the statement of it. As this section now reads, it makes it imperative upon the Legislature to provide that in all cases dues from corporations shall be secured by some individual liability of the corporators. This section is in precisely the same language as the present Constitution on this subject. But I have been told by a gentleman from New York now absent [Mr. Tilden], who was a member of that Convention, that the phraseology of that section gave rise to considerable embarrassment at the next session of the Legislature which was held after the Constitution was adopted, and that it was conceded by

the chairman of the Committee on Corporations in the Convention of 1846, on consultation, that the phraseology in that respect was unfortunate. Now, there are many kinds of corporations where it never has been designed that there should be any individual liability upon the part of the corporators. I refer to religious societies, to benevolent societies of different kinds, and rural cemetery associations. Any person is, in one sense, a corporator of a religious society who has been a stated attendant at public worship with that society for a certain length of time, and contributed to the support of the minister. Every person is a corporation in a rural cemetery association who owns a lot. So in regard to many corporations I could name. And I would further say that I have been informed by a gentleman who is a member of the committee whose report we are considering, that it was designed by the committee to have changed that phraseology, and to have had the word "or" instead of "and." I hope, therefore, this amendment will prevail, in which case, while the Legislature will be at liberty in all cases where it is proper to secure, or cause to be secured, dues from corporations by individual liability of the corporators, in the other cases they will not be compelled to resort to that, but will adopt such other means as will secure creditors. I will say further that this provision as it exists in the Constitution of 1846, and as it has been incorporated in this section, has been entirely nugatory in its effect. Dues from corporations have not been secured in all cases by individual liability.

The question was then put on the amendment of Mr. Hale, and it was declared carried, on a division, by a vote of 29 to 27.

A DELEGATE—There is no quorum voting.

The CHAIRMAN—The Chair thinks there is a quorum present. The question will be put again.

The question was again put on the amendment of Mr. Hale, and it was declared lost, on a division, by a vote of 35 to 43.

A DELEGATE—There is no quorum voting.

The CHAIRMAN—The Chair is sure there is a quorum within the bar of the house. Gentlemen will please vote.

Mr. CHESEBRO—There are a number of gentlemen in the lobby who are probably not aware there is no quorum.

Mr. VEEDER—I have considered the amendment proposed by the gentleman from Essex [Mr. Hale]. I cannot see where there is any difficulty, or where it can work any embarrassment by leaving the section precisely as it now stands. If this amendment is adopted, and the Legislature provides for the securing of the payment of duties by the individual liability of corporators, they must stop there; they can use no other means, or if they resort to other means they can make no individual liability. Now they can make individual liability to secure dues, and they can also resort to other means. The class of societies referred to by the gentleman [Mr. Hale], religious corporations and cemeteries, cannot be harmed by individual liability of the parties who are corporators in such societies. In many instances it works a great amount of good to secure the payment of dues by individual liability, and also by

other means, so there shall be no question about the payment of dues from corporations. I, therefore, respectfully submit that it is advisable, in my judgment, to leave the section as it now stands.

Mr. GERRY—I think the gentleman from Kings [Mr. Veeder], has misapprehended the meaning of the amendment of the gentleman from Essex [Mr. Hale]. As the section now reads it is rendered imperative on the Legislature to compel the payment of dues by corporations by means of individual liability of the corporators. It also provides that they may, in addition to compelling dues by this personal liability, provide other means. The proposal is to exempt corporators from personal liability in other cases, as in the cases which have been instanced. As the section now reads, every corporator in a corporation organized by virtue of this act, is rendered personally liable for the dues of that corporation. The proposition is to render the section disjunctive; so the Legislature may, or may not prescribe personal liability as a means of securing the payment of dues.

Mr. ALVORD—I think the gentleman from New York [Mr. Gerry], and the gentleman from Essex [Mr. Hale], are both mistaken in this matter. As it is now, this is just exactly as it is in the present Constitution of this State. Under that Constitution the Legislature have made a law in reference to manufacturing associations and corporations, retaining personal liability until the full amount of the stock is paid in; after that the personal liability shall cease, except so far as regards the payment of employees, and not any further. But other means, the assets of the company and all that sort of thing, are then brought in to pay the balance of liability. Another thing: provision is made, if the directors of these corporations shall undertake to go beyond the means they have in their hands, to create debts against the manufacturing establishment, beyond their assets, then the directors are personally liable. So there is no difficulty in this case at all. Whereas, take the proposition of the gentleman from Essex [Mr. Hale], and you have to disjoin in your laws the other means, from the individual liability, in every individual case. You cannot embrace more than one of them. For that reason I think the gentlemen are mistaken.

Mr. GERRY—I would ask whether the practical effect of the amendment of the gentleman from Essex [Mr. Hale] is not to leave the matter to the Legislature, instead of making it imperative?

Mr. ALVORD—The practical effect is to leave it to the Legislature to say which one of these two ways shall be taken, or both combined.

Mr. BARKER—I wish to make a simple suggestion. The amendment as proposed, is intended, as I suppose, that the Legislature might have the power to direct some other mode of securing debts than individual liability. The Legislature can impose upon corporators, both individual liability and other means of collecting a debt. Now, it is suggested, to remedy that this amendment is proposed; that you cannot impose any other means of collecting debts from corporations unless you connect with those means the individual liability of the corporator. And that is the object of the gentleman

from Essex [Mr. Hale], that the Legislature can adopt both or either.

Mr. COMSTOCK—I hope the amendment of the gentleman from Essex [Mr. Hale] may prevail. If you take the section as it now stands you find that in all cases of corporate liabilities there must be a resulting individual liability, no matter what the nature of the corporation is. This broad language, as we find it in that section, I think will apply to religious and charitable corporations and even to municipal corporations; it is not confined by the terms of the section to stock corporations. But even if it were I doubt the wisdom of inserting such an inflexible provision in the organic law. We all know very well that much of the progress of the country, its material prosperity, and wealth, and power depend upon the corporate association of capital. I think, therefore, it would be eminently unwise to say by our Constitution that capital shall not be associated in any case or for any purpose whatsoever, great or small, without the individual liability of the corporator. I think this had better be left to the wisdom of the Legislature, and that the subject should not be confined and fixed forever by inflexible provisions of the organic law.

The question was put on the amendment of Mr. Hale and was declared lost, on a division, by vote of 40 to 47.

No further amendments being offered, the SECRETARY proceeded to read the third section, as follows:

SEC. 3. The term "corporation" as used in this article, shall be construed to include all associations and joint stock companies having any of the privileges and powers of corporations, not possessed by partnership or individuals. And all corporations shall have the right to sue and shall be subject to be sued, in all courts in like cases as natural persons.

No amendments being offered, the SECRETARY proceeded to read the fourth section, as follows:

SEC. 4. The Legislature shall have no power to pass any law, sanctioning in any manner, directly or indirectly, the suspension of specie payments by any person or corporation.

Mr. OPDYKE—I move to amend by striking out this entire section.

The section I propose to strike out is a modification of one of the provisions in the present Constitution. It differs from that only being more sweeping in its prohibitions. The existing provision applies only to banks of issue that suspend specie payments, while the section proposed by the Committee on Banks and other Incorporations applies to all persons, associations or incorporations that suspend specie payment. It declares, in language as clear, direct and explicit as can be framed, that no suspension of specie payments shall be legalized; and, hence, if strictly enforced, it would promptly place in liquidation every bank failing to meet its immediate liabilities or demand in coin. This was the evident purpose of the Convention that framed the Constitution of 1846 in placing a similar provision in that instrument. Well, sir, it has stood there as a part of our organic law for twenty years, and what has been its effects? Why, sir, they have

been, first, to make manifest the imperfect financial knowledge of those who placed it there; secondly, to place the material interests of the people, on at least two occasions of general bank suspensions, in imminent danger of utter ruin; and, thirdly, to constrain the judiciary of the State, in order to save the community from general insolvency, to render the mischievous provision nugatory by refusing to entertain suits against banks, intended to place them in liquidation. Such, sir, have been the only fruits of this absurd constitutional provision. We have abundant reason to be thankful that they have been no worse. Had not the courts, in 1857, with a moral courage worthy of all praise, disregarded the intentions of this constitutional mandate, and placed themselves under the sanctions of that higher moral law which forbids the voluntary sacrifice of the public good, it is safe to say that at least four-fifths of the people of this State would have been involved in hopeless bankruptcy. Let us, for a moment, look at the facts. At that time every bank in the State save one suspended specie payments. It was an involuntary suspension. They could not avoid it, because their immediate liabilities were at least fivefold the amount of specie in their vaults, and the public confidence in their solvency was so shaken that their creditors were clamorous in their demand for instant payment. Being unable to respond to more than one-fifth of the demands against them, their only alternative was suspension. These banks, thus forced into suspension, furnished, in their circulation and deposits, more than nine-tenths of the currency or circulating medium of the State. While permitted to continue the exercise of their business, although in a state of suspension, their circulating notes, and checks drawn upon their depositors, would continue to perform the functions of money by passing current in the payment of debts and in the purchase of property, though at a value somewhat below that of coin. But, if once put in liquidation, from that moment their deposits would be unavailable until the final winding up of their affairs, and their circulating notes would be sent to the banking department to await the time of redemption. Consequently, if the purpose of this constitutional provision had been carried out in 1857, by placing the banks in liquidation, we should have been without a circulating medium wherewith to transact business. No one could have paid his notes or any other pecuniary obligation, and the whole community would have been involved in a common insolvency. Fortunately, as I have already said, the courts determined to protect the community from this overwhelming misfortune by sustaining the banks without the authority of law, and by interposing the shield of their authority between them and this constitutional mandate. Public opinion unanimously sustained this action of the courts then, and it sustained the same policy after the suspension of the banks in 1862. What adds to the absurdity of this provision is the fact that every bank of issue that has ever existed in this State, has inherited the seeds of suspension from the law of its organization, as certainly as the seeds of disease and death inhere in the animal organism. Every bank of issue we have had in

this State has suspended specie payments, most of them many times; and every bank we ever shall have will suspend specie payments, unless we change the laws governing their organization. These laws authorize them to contract whatever amount of demand liabilities their imprudence or cupidity may suggest; and yet they fail to require the banks to hold any stipulated proportion of coin to meet their liabilities. Under this freedom from restraint, the banks usually permit their demand liabilities to range from four to eight times the amount of coin in their vaults. The consequence is, when a panic or commercial convulsion brings a crowd of timid creditors to their doors, they are compelled to suspend payment. It is inevitable. We might as well attempt by constitutional provision to stay the whirlwind as to prevent this result. Enacting banking laws that render inevitable the suspension of every bank organized under them, and at the same time declaring in the Constitution that their suspension shall be fatal to them and most injurious to the community, would scarcely be equalled in folly and wrong by sending a scuttled ship to sea, with injunctions to crew and passengers that they should neither stop the leak nor abandon the sinking ship. In both cases inevitable destruction must be the result. I trust, sir, that this obnoxious provision which for twenty years has remained a nullity in our fundamental law, simply because its enforcement would inflict irreparable injury on our material interests, will be struck out.

Mr. GERRY—I offer the following amendment:

The SECRETARY proceeded to read the amendment:

"When there is no agreement for a different rate of interest of money, the same shall be at such rate as may be by law provided, but the Legislature shall not restrict the right of parties to contract for payment and receipt of any rate of interest."

The CHAIRMAN—The Chair hardly thinks the amendment at this time is pertinent to the amendment of the gentleman from New York [Mr. Opdyke].

Mr. VEEDER—Is it not in order to make an effort to perfect the section, before you move to strike it out?

The CHAIRMAN—The amendment of the gentleman on the left of the Chair [Mr. Opdyke], is to strike out the entire section; the gentleman on the right of the Chair proposed to insert something which cannot hang upon nothing, as it were.

Mr. VEEDER—As I understand, it is an amendment proposed to the section as reported. I believe a motion to amend the section under consideration takes the preference of a motion to strike out.

The CHAIRMAN—The Chair thinks the amendment is not germane to the subject; it will be in order after the amendment of the gentleman from New York.

Mr. GERRY—I withdraw my amendment at the suggestion of the Chair.

Mr. GREELEY—I concur for once with the gentleman who moves to strike out, but for a very different reason. He is an advocate of the state of things as they now exist. I am their earnest

opponent. I propose to strike out, and insert as follows:

"The Legislature shall have no power to impair the obligation of contracts, nor to legalize the violation of any contract, whether by a corporation, a partnership, or by a natural person."

I do not care to continue this war of words about specie payments when there is no such thing as specie payments. It looks like a death's head kept grinning at us in the Constitution in shame and in scorn. It does seem to me that a sound principle is involved in the words of the Constitution, and they ought to be retained. I, therefore, offer this amendment, which, I trust, will take the place of the section the gentleman from New York [Mr. Opdyke] proposes to strike out.

Mr. PAIGE—The amendment of the gentleman from Westchester [Mr. Greeley] is not necessary. The Legislature of this State, under the Constitution of the United States, has no such power now to impair the obligation of contracts.

Mr. GREERLEY—They do it, though. In my judgment, the whole paper money system, as established by the States, is in violation of the Constitution. I do not care to raise that question now; but I think the fact that this proposes to conform to the Constitution of the United States ought not to be any objection to it.

The question was then put on the amendment of Mr. Greeley, and it was declared lost.

Mr. KERNAN—I am opposed to striking out the fourth section as reported by the committee. I am particularly opposed to striking it out for the reason stated by the gentleman from New York [Mr. Opdyke]. He says he is in favor of striking it out because in the history of our courts they rose to the moral grandeur of disregarding this provision in the existing Constitution. I do not so understand the history of the courts of this State. I submit they are not justly chargeable with any such grave breach of duty. It is true that under circumstances well remembered, some of the judges held that the state of things did not exist which required them to grant applications which were made to them against certain banks; but I believe they did not put it on the ground that they would disregard the Constitution of the State and their official oaths. It is said we should omit this provision in our State Constitution because we have now paper money, which prevents us exacting dues in specie; but we have nothing to do with that in our State Constitution. Congress declared that certain paper, issued by the federal government, should be specie in effect. The courts of the State have held that the paper issued under this law, and declared to be a legal tender, would answer; and we must receive it in the State, as payment of obligations, the same as gold. I do not propose to discuss the wisdom or propriety of this state of things; but it furnishes no reason to my mind why we should authorize the Legislature of the State of New York to do the same thing. In the hope of better days in reference to the currency and to avoid the risk of the evil being perpetuated by the Legislature of New York, we had better retain in the new Constitution, this provision which is contained in the old. I hold that our

Legislature should not be permitted to make anything but specie a legal tender in the payment of debts. The provision will guard against vicious legislation in this State, and will prove that the people of New York are in favor of a sound currency, so soon as it is attainable. There is no reason why we should not retain in our Constitution this provision that forbids the Legislature of this State from sanctioning by law the suspension of specie payment by any corporation or person. I trust the Legislature of New York will not be authorized to create or perpetuate an irredeemable paper currency.

Mr. GOULD—I certainly hope the motion of the gentleman from New York [Mr. Opdyke] will prevail. I well recollect the difficulties which ensued in the year 1857 arising out of the condition of the banks at that period. I know perfectly well that their assets at that time would not permit them to redeem their circulation in specie. I know perfectly well the public mind, at that period, by reason of the provisions of the existing law, was thrown into great agitation and alarm. Whenever a bill or a promissory note of any bank was protested, within a very few days after that protest, the bank ceased to exist as a corporation altogether, the power of its presidents, its cashiers, its board of directors absolutely ceased and it was obliged to go into the hands of a receiver appointed by the courts. Those receivers had no power whatever to extend the time for the payment of the notes and obligations of the creditors of the banks. If they were not paid at the proper time they must be sued; then they must be put into judgment and then to execution. Now, what was the practical effect at that time? Nearly all the banks in the State had suspended specie payments. Suppose this law had been enforced to the full extent, the property of the banks would have gone into the hands of receivers, the notes of all those who owed them money would have been put in suit, when they were in suit they would run to execution. What would have been the result if the whole property of this State had been sold under execution at public auction by the sheriff? The result would be, that all the property of the State would have been put into the hands of the moneyed men of Wall street, who alone could have bought it at the sheriff's sale. Sir, I recollect at that time I was very greatly impressed with the danger which the owners of property and the debtors of the State were under. I came here with some other gentlemen to see Governor King in relation to that subject. We desired him to call a meeting of the Legislature—a special meeting by proclamation, at once, in order to take some measure to relieve the liabilities of the people at that time by extending the time for the redemption of these bills, which, in our opinion, was most urgently demanded. Before we left the executive chamber we had the solemn promise of Governor King that he would issue a proclamation calling such a special meeting of the Legislature. But there came in a decision of the supreme court in this district which solved the difficulty and made it unnecessary to call them together. The substance of that decision, according to my recollection, was

that a bank holding one thousand dollars of its notes might bring them to the Superintendent of the Bank Department and take up a thousand dollars of the stock deposited for security. It could then sell that stock in the market and bring back another quantity of its bills, redeem a like amount of stock, and thus by successive sales of the stock pledged for the redemption of its bills it could gradually redeem its issues. In that way the banks were practically relieved. I do not understand that was a decision which was contrary to the Constitution of the United States, or adverse to the Constitution of New York. It was simply a decision which saved the banks from bankruptcy, and the property of debtors of this State from going into the hands of men of money in Wall street. I hope this amendment, therefore, will prevail, in order that such contingencies may hereafter be avoided. It may be suggested that we now have scarcely any banking system of our own; that the banking system of the State has passed, under laws of the United States. It certainly would be within the circle of possibility that within the next twenty years we will have a banking system of our own. If we do have such a system, I do not desire the committee shall sanction any such stringent provisions as are provided in the fourth section. Therefore I hope this amendment will prevail.

Mr. S. TOWNSEND—I had hoped the word "banking," or anything in relation to State bank currency, would not come into the discussion at all. If gentlemen will look into the article they will see it does not occur.

Mr. GOULD—They are involved.

Mr. S. TOWNSEND—I have held that since the action of Congress on this subject, assuming to itself the control of the currency of our banking institutions, those that have acted most conservatively and most profitably to themselves have assumed that view of the case. They were forced to assume it, it is true, by the large percentage which is charged upon State bank circulation by the general banking act of the United States, and besides, by the fact that undoubtedly, in this exercise of authority on the part of Congress, they have for the first time assumed the legitimate powers of the general government in reference to currency and circulation. Notwithstanding, I believe that the issue of circulation, especially in the hybrid manner in which it is exercised through sixteen hundred institutions, Congress has gone far beyond their legitimate authority. I believe the framers of the Constitution did not intend they should coin paper into money. But I arose to say I have most vivid personal recollection of the operation of the laws of this State in 1857, as a merchant of New York. I believe that the operation of the fourth section, which principle was contained in the Constitution of 1846, was a most salutary one. Gentlemen have risen here—the gentleman from New York [Mr. Odyke]—and led us to suppose the value of our circulation fell far below the specie at that time. I appeal to the gentleman's recollection, that at no period did it fall more than two and a half or three per cent. I am sure it did not, though I speak from memory,

which is retentive on that point. I appeal again to the gentleman's recollection whether or not our banks would have resumed specie payments within sixty, or at the most ninety days, after suspension, had not the provision existed in the Constitution. It had, therefore, a most salutary operation in retaining a currency of thirty millions, or whatever it might be, in close proximity to a specie standard, and what is more important, forcing the banks back to their duty within ninety days. Not so the case of 1837, of which I have a distinct recollection. For want of some provision of this nature, the suspension was almost made permanent, at least for a year. It was with the greatest effort that resumption was effected within a year or fifteen months. Many remember the struggle that took place at that time between the new Bank of the United States, headed by Mr. Biddle, and the friends of specie payments in our State. In order to break down our banking institutions, an effort was made by the same influence that there should be a reversal of legislation in the matter. But the Legislature of that day stood by the law, and we had resumption within a year. Yet that year had cost the State sixty thousand dollars in premiums on specie paid the foreign bondholders. I maintain, therefore, the operations of that section of the Constitution of 1846 (similar to the present 4th section) were salutary. Allusion has been made, irregularly and incorrectly, with reference to the operations of our courts. The gentleman from Oneida [Mr. Kernan] has stated it according to my recollection with perfect distinctness and correctness. Our courts were applied to—not in this district, as the gentleman last night says, but in the city of New York. I believe there are members of that court now present who will confirm my opinion, that there was a strong conscientious feeling on their part that they were straying very much aside from their duty under the pressure of local impotency, in allowing—not a decision or a declaration, but an intimation—that the courts would not, under the circumstances, encourage annoyances of banks by separate suits; but that suits must be agglomerated, as it were. In short, the court would not favor any disturbances of banks who were endeavoring, as near as possible, to maintain specie payments. I believe the operation of the section under consideration was most salutary. I hope not to see it stricken out.

The question was put on the motion of Mr. Odyke, and it was declared lost.

Mr. GERRY—I wish now, sir, to offer an amendment to the section, to be added at the end of it.

The SECRETARY proceeded to read the amendment, as follows:

"When there is no agreement for a different rate of interest of money the same shall be at such rate as may be by law provided; but the Legislature shall not restrict the right of parties to contract for payment and receipt of any rate of interest."

Mr. GERRY—It will be impossible, sir, within the brief time now allotted for arguments in Committee of the Whole, under the rule, to do more than merely state the propositions and motives which have actuated me in offering the amend-

ment I have just proposed. It is designed in substance, to do away with that class of laws known as usury laws; providing at the same time for a legal rate of interest, where there is no agreement for a rate of interest between the parties. I do not propose at this moment to dwell upon the exploded prejudices which caused the passage of usury laws in England, and which laws were re-enacted here subsequently, on the basis of the English system. I desire simply to allude to the fact, that as lately as the reign of William IV, the first radical change was made in the usury laws, by an act then passed, declaring they should not apply to notes having more than three months to run; and by subsequent legislation the entire effect of all the usury acts has been done away with altogether in England. Further, I desire to call attention to the fact, that recently, in the State of Massachusetts, there has been an act passed by the Legislature, from which, in substance, the amendment which I have offered has been drafted. That act provides: "1. When there is no agreement for a different rate of interest on money, the same shall continue to be at the rate of six dollars upon one hundred dollars for a year, and at the same rate for a greater or less sum, and for a longer or shorter time. 2. It shall be lawful to contract, to pay in revenue, discount at any rate, and to contract for payment and receipt of any rate of interest; provided, however, that no greater rate of interest than six per cent per annum, shall be recovered in any action, except when the agreement to pay such greater rate of interest is in writing." Now, while the amendment which I have proposed, does not deprive the Legislature of the right to fix the rate of interest throughout the State, it does provide that it shall be left in substance for parties to regulate by contract between themselves, if they shall so choose, the rate of interest they shall decide upon. I desire to call attention, first of all, to the practical effect and working of the usury laws as they now exist in this State. It is perfectly competent and proper for any farmer in the country to invest his money in wheat and grain of any description, and to pay for that grain at the rate of one dollar a bushel, keep it for thirty days, and sell it then at one dollar and five cents a bushel, and then reinvest his money in any other merchandise, keep it for a certain length of time, and sell it again at a further profit. In this way he may realize more than a hundred per cent a month on the investment of his money, and yet not be at all subject to the laws for the prevention of usury. If that same farmer should see fit to loan his money upon the farm of his neighbor, who offers and is willing to pay him eight per cent a year for the money thus loaned, and he is foolish enough to loan it and to take a mortgage by way of security, at that rate of interest his mortgage is vitiated and his principal forfeited, provided his neighbor is sufficiently wanting in principle to contest his lien on the ground that the loan was usurious. The legislation on the subject of usury has practically been intended, and always had that effect, to shield men who act with their eyes wide open from the consequence of their intentional acts. It has furnished a plea to every rascal who

wished to evade the consequences of a legitimate loan; and it has had a very serious effect upon the investments of money within the State of New York by driving capitalists to other States where there is no such restriction. In the State of Massachusetts, as I have just shown, there is no restriction at all of the rate of interest. In Illinois and Ohio the rate is six per cent when not limited by agreement to ten. In Michigan it is seven where not so limited to ten. In California the rate is fixed at ten per cent; in Wisconsin at twelve; in Alabama and Texas at eight. So that outside of the State of New York, where we are limited to seven per cent, there are eight other States in the Union where men can invest their money without any limitation, or, if there is any limitation, it is at a much higher rate of interest than our own State recognizes as legal. This is not a novel proposition of mine by any means, that this change shall be inserted in the organic law of the State. Members of the Convention will find by reference to the Constitutions of the States of Maryland and Tennessee, that there are provisions there contained in reference to the rate of interest, which their Legislatures are allowed to regulate. The Legislature requires, to a certain degree, some restriction of this nature, because it is left to it to regulate from time to time the lawful rate of interest, where there is no agreement to the contrary. I submit there should be an inhibition against its infringement upon the obligation of contracts, by declaring them void for usury, where the parties voluntarily enter into agreement and there is no practical injury to any one but to the parties themselves. The effect of these usury laws were never felt so keenly as in times of panic, for then many and many a commercial calamity would have been averted, if men were permitted to borrow money at such rates as they might be willing to pay. Such has been the experience of the financial crises which have occurred during the past years, which have so seriously damaged the financial interests of this country and State. They have been owing in no small degree to these stringent usury laws which have prevented merchants from obtaining the money they required for a short time to meet their liabilities at a rate they were perfectly competent and willing to pay. The laws of this State against usury as they now stand, are practically evaded every day. Suppose, for instance, a merchant desires to obtain a loan on merchandise, he is willing to pay for that loan a certain amount, in addition to the legal rate of interest. Only see how this is accomplished, and the present law evaded. A loan is made on the merchandise, and instead of being made in cash, the loan is made in a note for three months, and then the party who makes the loan, on the giving of the note, charges his commission, whatever he may choose on it. The loan is thus made, and the party who makes it gets both the full benefit of his commission and the legal rate of interest beside. That is only one of the many ways in which the usury laws at the present day are practically nullified. They have ever been a disadvantage to our State, because they have driven those who have capital to invest

to other States, where a larger rate of interest could be legitimately obtained. I think it is perfectly proper to leave it to the Legislature, in cases not provided for by contract between the parties, to fix the rate; but I can see no good legal reason, why there should not be inserted in the Constitution we are now revising, a clause providing that the Legislature shall not interfere with contracts made between parties for the loan of money, where the parties are competent to contract, and perfectly willing that a certain rate of interest shall be paid, as agreed upon between themselves. In other words, I think there should be a prohibition against the Legislature restraining parties from taking advantage of their own wrong, and thus overturning the rules of fair dealing, which ought ever to obtain with business men and those engaged in the pursuits of commerce.

The question was put on Mr. Gerry's amendment, and it was declared lost.

The SECRETARY proceeded to read the fifth section as follows:

SEC. 5. The Legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

Mr. PROSSER offered the following amendment:

The SECRETARY proceeded to read the amendment:

Insert after the word "money," in second line, the words "by virtue of any law of this State."

Mr. PROSSER—It seems to me, as the section now reads, that there may be a conflict of authority if the Legislature should undertake to compel the national banks to make the registry herein required. For this reason I have offered the amendment.

The question was put on the amendment of Mr. Prosser, and it was declared carried, on a division, by a vote of 51 to 22.

Mr. VEEDER—There is no quorum voting.

The CHAIRMAN—The Chair thinks there is a quorum present. Gentlemen are requested to vote on one side or the other.

The question was again put on the amendment of Mr. Prosser, and it was declared carried, on a division, by a vote of 64 to 28.

Mr. GARVIN—I offer the following amendment:

The SECRETARY proceeded to read the amendment:

Amend section 5 by adding thereto:

"In case of the insolvency of any bank or banking association, the billholders thereof shall be entitled to preference in payment over all other creditors of such bank or association."

Mr. GARVIN—I think the propriety of the amendment is so manifest that it needs no observation. It is copied from the Constitution of 1846, and protects perfectly the billholder, so far as there is any preference.

Mr. GREELEY—I only wish to know whether that is not in direct conflict with the terms of the bankrupt law. If it is, I think we had better not adopt it; if it is not, I have no objection to it.

Mr. GARVIN—I think it is not.

The question was put on the amendment of Mr. Garvin, and it was declared carried.

Mr. S. TOWNSEND—I now move to strike out the fifth section, which is, according to my interpretation of the laws of the United States, surplusage. I take the liberty of reading some observations made in the *Journal of Commerce*, a leading commercial paper of New York, under date of October 22, 1863, sustaining my view of the case, which is as follows:

"Whatever question there may be as to the constitutional power of the government of the Union to issue paper or other material than coin to circulate as money, there can be no doubt that under the tenth section of the first article of the organic law, the individual States are interdicted from the issue. That a body denied the right itself, could delegate to others what it did not possess (as the States have done to corporations and individuals from a period coeval with, indeed antecedent to, the adoption of the Constitution), is one of those contradictions only to be explained by the fact that the pressure of associated interest and influence can for a long protracted period override even the logic of common sense, which a great jurist once said is the basis of all law. Those of the present day, that choose to refer to the authority, will find that the framers of the laws of this State, which tended to perfect our system of banking (that were from time to time enacted from the years 1840 to 1842—the leading features of which in the matter of *secured circulation*—in the year 1844, won the approval and adoption, by the English statesmen, in their important modifications to the charter of the Bank of England, and have more recently received the warmest eulogiums from Mr. Secretary Chase), never in the written reports of that day claimed, otherwise than that they were attempting to improve the mode in which this State had with her sisters exercised a very questionable power. Under this view of the matter, the writer deems the action of the United States government in assuming the exclusive control of the paper money of the country at this period, when it forms so important an element in subduing the rebellion, well and constitutionally taken, and that the proper course for our State institutions (whose patriotic conduct heretofore in support of the government we all remember, leading the way, in this instance, as they did in the war of 1812) is to accommodate themselves gracefully to the force of circumstances that now compel a relinquishment of the *questionable profits* of circulation. This should be the policy, at least so far as most of the city banks are concerned, and many, it is believed of those of the interior, may be classed with them; these should speedily adapt themselves to the more legitimate business of banking that draws its profits from the safe custody and management of their own capital and the money of their depositors. From this position no unfriendly legislation on the part of the National Congress can drive them, for they are only in the legitimate exercise of those powers of incorporation or association that are appropriate functions of *State* delegation and authority. In this connection the query suggests itself,

why the Secretary of the Treasury deems it necessary or politic to abandon the direct profits upon five hundred millions of national circulation, in the form of *demand notes*, and to institute the mongrel circumlocutious mode of employing a thousand banking associations to *muddle* the matter."

Mr. BEADLE—Currency and banking, once the pride of our State, the credit and stability of whose institutions was unchallenged throughout the land, are already things of the past, rather than subjects to provide for in looking to the future of our State, at least so thought a majority of your committee. Events of the past six years have wrought an entire change in the financial affairs of the whole country and State institutions, for banking has been changed or merged in associations, organized under laws of the general government, thus transferring the question of currency, and, for the most part, banking, from this State, and place it at the disposition of Congress and the general government. They felt, sir, that that was something likely not to be returned to the State, but upon the Manual placed upon our tables we find that "shrewd and sagacious financiers" are of the opinion that the banking system of the State of New York has not outlived its usefulness, but is destined to be revived and live a long and prosperous career. I, myself, Mr. Chairman, am not one of those shrewd, sagacious and far seeing individuals that can find anything in the indication of the general government or in the situation in which we are placed that looks at all like a recurrence to State banks. It has been urged upon the floor of this Convention that men and combinations of men when once possessed of power are very loth to give it up. That being true, I apprehend that the day is far distant when the general government having control of the finances in this country, its currency and its banking, will ever yield that power again to the separate States. If it be settled then, and your committee cannot resist the conviction that it is so, our State has but to yield to an overpowering necessity, with this, if no other satisfaction, that in adopting the system known as national she is still in possession of so much of what was her own system as is valuable in the latter, and that the loss to her and other States is that the general government did not adopt the entire provisions of our system. But, in deference to these "shrewd, sagacious, far seeing men," the committee reported so much of the present Constitution as related to banking. That is the explanation, and, if necessary the apology why this section was reported by the committee.

The question was put on the motion of Mr. S. Townsend, and it was declared carried.

Mr. OPDYKE—I offer the following as a substitute for the fifth section.

The SECRETARY proceeded to read the substitute for section 5, as follows:

"No bank of issue shall be hereafter established under the authority of this State."

The hour of two o'clock having arrived, the PRESIDENT resumed the chair, and the Convention took a recess until half-past seven o'clock.

EVENING SESSION.

The Convention re-assembled at half-past seven o'clock, and again resolved itself into Committee of the Whole, on the joint report of the Committees on Currency, Banking and Insurance, and Corporations other than Municipal.

The CHAIRMAN announced the pending question to be on the amendment of Mr. Opdyke.

Mr. OPDYKE—It appears to me that, under the changed condition of our finances, this is a proper provision to be placed in the Constitution of every State in the Union. The government of the United States has assumed the duty of furnishing the people with a paper money circulation of uniform value throughout the Union. I am one of those who believe that it has rightfully and usefully assumed that duty. I think the Constitution of the United States intended to confer that power upon Congress, in declaring that it should have the right "to coin money, regulate the value thereof, and of foreign coin;" and I think it intended to withhold it from the separate States, in declaring that they should not "coin money, emit bills of credit, nor make anything but gold and silver coin a tender in payment of debts." Now, sir, I am not one of those who favor yielding to the general government any power that is not conferred upon it by the Constitution. I am in favor of keeping it strictly within the boundaries of its own power, and in favor of maintaining firmly the rights that have been reserved to the separate States. Within the sphere of our own sovereignty, we are as truly supreme as the government of the United States is in the sphere of its sovereignty. But, sir, as I have already said, I feel that this is one of the prerogatives which the people have conferred upon that government. And, for one, I am very glad that it is so, and that it has at length assumed the duty of exercising that power. But a small share of our circulating medium has ever consisted of coin. It has consisted mainly of paper money issued by banks holding small reserves of coin in their vaults with which to redeem it. There can be no doubt, therefore, that our circulating medium will be improved by having it all issued under the authority of one government, uniform in its value and uniform in its character. Before the national banking law was passed we had bank notes issued under and by the authority of nearly forty separate and independent States; their laws all varying in their provisions, diverse in their character and in the degree of security they afforded to the billholder, and not of equal value in different parts of our country. Since the national banking system has been established all that is changed, and in every respect in which they differ, the notes issued under and by authority of that law are superior to those issued under and by the authority of the separate States. In the first place they afford better security to the billholder, because, if a banking company is insolvent and unable to redeem its own notes, the government immediately redeems them for them. There is no loss of money, no discount, no inconvenience to the billholders. In the second place, they are of uniform value throughout the United States, because the law provides that they shall be a legal tender to the government in payment

of any dues to it, and also a legal tender from one bank to another. The result has been, as experience has fully demonstrated, that there is practically no discount whatever on these bills in any part of the country.

Mr. LANDON—If the gentleman will allow me, I should like to ask him a question.

Mr. OPDYKE—I shall need all my time. The gentleman will have plenty of time after I have closed. In the third place, a still greater superiority over any banking law that has ever been passed in this or any other State in the Union, except Louisiana, is to be found in the fact that the national banking law requires a reserve equal to at least twenty-five per cent of the entire liability of the bank. This certainly affords superior security, not only to the depositor, but to all other classes of creditors. It also keeps the bank more steady, with less fluctuation, less contraction and expansion, and consequently keeps the value or purchasing power of the money they issue more uniform. In connection with this feature of superiority is another of still greater importance, and that is the absolute limitation of the aggregate amount of issue to three hundred millions of dollars. The advantage of that is almost inestimable, as compared with the system of paper money in operation before. Under the banking laws of the different States there was no limit to the amount of issues of any one bank, no limit to the amount of issue in any one State; and so of all the States; and the consequence was that their aggregate issues of circulating notes were forever fluctuating, sometimes rising as high as two hundred and sixty or two hundred and seventy millions, and again shrinking to less than one hundred and fifty millions. Now, sir, whatever may be the spirit of speculation or overaction in trade under the United States banking law, the circulation can never exceed three hundred millions of dollars, an amount much smaller in proportion to the business of the country than under the State banking system in its period of largest expansion. Now, sir, if it be constitutional, as I have no doubt it is, and if it be useful, as I have endeavored to show, that the government of the United States should exercise this prerogative, giving us, as it does, a better currency, of more uniform value, why desire to continue our old system? We could not do it if we would; and it seems to me we should not if we could. What have we left of the wreck of our own banking system? A few scattered banks, after years of suspension, despite the nugatory constitutional prohibition which we have just voted to retain, continue to exist, but the profits of their business are destroyed and their circulation suppressed through the taxing power of the United States government, which it is rigorously exercising. There is no longer room for profit for State banks of issue, and they have no capacity to benefit the people in any respect. Why not, therefore, acknowledge the improved condition of things, and say in our Constitution, that hereafter no banks of issue shall be authorized in this State? I hope this Convention will look on the matter in a broad national light, and say that we accept the improved condition of things, and that we will no longer authorize State banks of issue,

nor interpose other obstacles to the full consummation of this most valuable reform in our paper money system.

Mr. CHAMPLAIN—I regard the amendment of the gentleman from New York [Mr. Opdyke] as opening up an important question. It has received, sir, an increased importance from the avowal which has been made by the gentleman who introduced it, that it is intended as another renunciation, or rather as another surrender of State power and sovereignty to the Federal government. Now, there is nothing in the Constitution or laws of the United States—assuming that State lines are not entirely obliterated, and that a great overshadowing centralized despotism has not been erected upon their ruins—that prevents any citizen from pursuing the business of banking the same as any other business to which he chooses to direct his capital or energies. The State government has exercised the power of taking this right from the people, making it an element of sovereignty, and granting it to individuals or to associations under such terms and conditions and restrictions as the public good shall require. Now, if I understand the gentleman's amendment, he proposes to declare an abnegation of this power. Sir, what is this power, and what has been its history in the great State of New York? You have heard eulogies pronounced here upon the enterprise of our citizens, and upon the achievements of concentrated capital; and yet the banking system of the State of New York has been a mighty agency through which all those achievements have been obtained. And, indeed, the system upon which the gentleman [Mr. Opdyke] has pronounced his eulogy is borrowed substantially from the general banking system of this State. What is proposed to be done? It is proposed to renounce this great right and to prohibit the Legislature from creating any bank of issue during the existence of the Constitution we shall frame. The gentleman on my left [Mr. Lapham] has taken occasion, in an earlier part of the day, to refer to a time when monopolies were denounced from the floor of the United States Senate, and to the eloquent voices that reverberated through the Senate chamber of the United States when they rallied to the support of General Jackson and his veto of the United States Bank. Since the recess of the Convention I have been able to lay my hands upon one of the speeches of those Senators, and I will invite the attention of my friend to the very words that were enunciated in that debate. This United States Bank charter was objected to on the ground that it had authority to establish branches in the different States without their consent, and in defiance of their resistance. The speaker (Mr. Benton) from whom I quote, uses this language:

"To establish branches in the different States without their consent, and in defiance of their resistance. No one can deny the degrading and injurious tendency of this privilege. It derogates from the sovereignty of a State, tramples upon her laws; injures her revenue and commerce; lays open her government to the attack of centralism; impairs the property of her citizens; and fastens a vampire on her bosom to suck out her gold and silver. It derogates from her sovereignty, because the central institution

may impose its intrusive branches upon the State without her consent, and in defiance of her resistance. It tramples upon her laws; because, according to the decision of the supreme court, the bank and all its branches are wholly independent of State legislation; and it tramples on them again, because the bank stock, under the decision of the supreme court, is not liable to taxation. It subjects the State to the dangerous maneuvers and intrigues of centralism, by means of the tenants, debtors, bank officers and bank money, which the central directory retain in the State, and may embody and direct against it in its elections, and in its legislative and judicial proceedings. It tends to impair the property of the citizens, and in some instances, that of the States, by destroying the State banks in which they have invested their money. It is injurious to the commerce of the States (I speak of the Western States), by substituting a trade in bills of exchange for a trade in the products of the country. It fastens a vampire on the bosom of the State, to suck away its gold and silver, and to co-operate with the course of trade, of federal legislation, or of exchange, in draining the South and West of all their hard money."

So it goes on to enumerate. Not one single objection was advanced upon the floor of the United States Senate that does not strike with equal force to destroy this national system that has received eulogy from my friend. Sir, this system which sprung into life in a great national emergency, has yet to pass the ordeal of solemn discussion in the Congress of the nation. Some other Jackson may uplift the banner of the Constitution, other eloquent voices may be heard against centralization, and other earnest, patriotic men may yet be found to stand up in defense of the reserved rights of the States. Again, this system has yet to be brought before the solemn judgment of the supreme court of the United States, the highest judicial tribunal of the land. It was boldly proclaimed by General Jackson, in his veto messages, and subsequently by Mr. Tyler, that the power did not exist under the clauses of the Constitution that the gentleman has cited, in which a majority of the American people, after the most solemn discussion, concurred. And more than that, sir, this question is to be tried by and has to pass through the ordeal of public calamity and adversity. We have tried this system in prosperity, we must yet try it in adversity. Who shall say when a great commercial revulsion shall sweep over the land, leaving behind it the traces of withering desolation, paralyzing business and prostrating this system in ruin, that you shall not wish to again invoke this power of banking, that your enterprise and energy may again be concentrated, and through a system of State banks formed under this slumbering power, to rebuild your broken commerce and re-establish your destroyed prosperity?

Mr. LANDON—The question that I desired to ask of the gentleman from New York [Mr. Opdyke] I will now ask of the committee. The national banking system is comparatively in its infancy. Suppose it should not work as well as we all hope. In what condition would we be, provided Congress should repeal the national bank-

ing act, and we should then be found with the gentleman's amendment incorporated in the Constitution?

Mr. BALLARD—The view that the committee had on this matter was that the present banking policy of the general government may not continue in its present condition for twenty years; and this was retained in the report of the committee as a matter of policy and precaution, so that if the State banking system should by any change in our national laws be abandoned, we should have something in our State Constitution that would be adapted to the change. It was mainly as a matter of precaution that we put it in our report.

Mr. GREILEY—If this were an original question, I should be inclined to sympathize with the mover of the amendment, and to vote for its adoption. I believe that the power to issue bank notes, or any other form of paper to circulate as money, is properly an incident of sovereignty; and I believe that the issuing of bank notes under State authority was never fairly within the purview of the Federal Constitution. If I can understand what was meant by the constitutional inhibition, "No State shall emit bills of credit," it was fairly intended to cover, and *does* cover, this whole ground; not merely forbidding a State to issue bills of credit, but also forbidding it to authorize and legalize the issuing of such bills by its citizens. It seems to me that the State might just as well exercise this power directly as to authorize its citizens to do it; and this amendment only conforms to that just and salutary provision of the Constitution which I have quoted. But, Mr. Chairman, it does seem to me that if we shall—probably for twenty years—bind the State of New York not to authorize any emission of paper money—not to create any corporation to emit paper money—we shall take a leap into the dark, for which I can see no adequate reason. If it were to be decided to-night whether the State should or should not further authorize the issue of paper money, I might vote with the gentleman from New York [Mr. Opdyke]; but it seems to me wiser to leave the matter open to the new light which experience may cast upon it—to leave our State free to do that which other circumstances—perhaps unforeseen emergencies—may dictate as the best thing to be done. In that view I shall vote against the amendment.

Mr. BEADLE—I agree most heartily with the gentleman from New York [Mr. Opdyke] in his eulogy of the national banking system, and also in his remarks with reference to its continuance as the policy of this country. I see myself, as I remarked once before to-day, no probability in the indications which come to us of the national policy of this country that there is likely to be any change. In reference to the United States currency and the banking of this country I agree with gentlemen that it is a very excellent system of banking—second, probably, only to the system of the State of New York. All that is really valuable in the national banking system, as it is in operation to-day in this country, was translated wholly and solely from the system of this State. And let that be a proud thought to us as we look back and find that the government of these United

States has taken pattern from this State, and although we have not of ourselves a banking system, and cannot have under the present national law—whether it is in this Constitution or not, the banks of this State cannot issue any circulation, as it has been prohibited by act of Congress. Yet we may say that although we have no banking system of our own, we gave the model to the general government for one of the best institutions that this country ever had. I do not see that we gain anything by the amendment of the gentleman from New York [Mr. Opdyke]. We simply say that henceforth there shall be no bank bills issued by banks of this State. As I said, it is now prohibited absolutely and in terms by act of Congress. What do we gain by it? As was said by the gentleman from Allegany [Mr. Champlain], many changes have occurred in this country within the last seven years, and that which seemed stable and likely to continue for centuries with us has passed away like the wind of yesterday. What may be the situation of this State, or any State, ten years hence, no man can foretell; but it may be in the mutations and changes that come to this country that we may wish again to recur to this system so happily adopted by the general government. And it was at the urgent solicitation of eminent bankers of this State that this provision was retained by the committee. They said: "Do not throw away needlessly that which may be of eminent service to us at a future day." My reply to one of the bankers of this city was, "If it was an original proposition I would not consent to have it reported; but as it was already in the Constitution of this State my vote will be given to have it continued;" and my vote will be given in this committee to have that section continued.

The question was put on the amendment of Mr. Opdyke, and it was declared lost.

There being no further amendment, the SECRETARY proceeded to read the sixth section, as follows:

SEC. 6. The stockholders in every corporation shall be individually liable to the amount of their respective share or shares of stock in any such corporation, for all its debts and liabilities.

Mr. GERRY—I move to amend the section by inserting the word "only" after the word "liable." My object in so moving to insert the word "only" in this particular section is in order to remove the liability of stockholders as partners for the debts of the company—a liability which is felt very keenly by those who may desire to invest money at the present time in stocks of corporations. By the terms of the sixth section, as reported by the committee, the stockholder of every corporation is made individually liable to the extent of his respective share of stock, for all debts and liabilities of the company. There is no limit of his liability beyond that; but it is left to the Legislature entirely to determine whether every person becoming a shareholder in any corporation shall not be made personally liable as partners for all the debts of the company. Now, a man may be willing to invest a certain sum of money in the stock of a corporation which he supposes to be legitimately conducted, with the risk of losing it. He does so

invest his money, and owing to some mismanagement never reaps one dollar advantage in the way of dividend, but finds himself six months afterward personally sued for a debt contracted by some agent of the company, on which judgment has been recovered against the company. It is next to impossible for him successfully to defend the suit on its merits, and he is thus obliged to pay large sums in addition to his original investment, from which he has reaped no personal advantage, but which he has lost also. It is with the view of limiting this liability and of relieving persons investing money in corporations of a personal liability for any further amount than for that which they have actually invested, that has induced me to offer this amendment. It will be seen that it does not in any manner relieve the directors of a corporation from their liability for debts contracted in behalf of the corporation by themselves or their agents, but is to prevent innocent stockholders from being made liable beyond the amount of their stock for debts for which they are in no way responsible.

Mr. BEADLE—I offer a substitute for the section:

The SECRETARY proceeded to read the substitute as follows:

SEC. 6. The stockholders in every corporation and joint stock association for banking purposes, issuing bank notes or any kind of paper credits to circulate as money, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association for all its debts and liabilities of every kind."

Mr. BEADLE—I wish simply to say, sir, that that is the seventh section of the Constitution of 1846—applicable in its liability only to associations for banking purposes. I conceive, sir, that the section which is adopted by this committee, and which makes a personal liability for all corporations, amply covers all that it is desirable to cover by the present section as reported by the committee.

Mr. GERRY—I avail myself of the privilege of the rule, to state a case that came within my own personal knowledge, which I omitted in my previous remarks and which shows the extent to which, under the section as reported, the personal liability of stockholders may be carried. A gentleman of property in New York city was induced to invest a certain sum of money in a corporation which he supposed had been properly organized, and to be conducted with ability and honesty. He invested his money, and heard nothing more about the matter until subsequently, when he found himself one day sued for debt on a judgment recovered against the corporation, and undoubtedly obtained through the connivance of one of its agents who had pocketed the funds of the company. He thus not only lost the money which he originally paid into the corporation, but was, sought to be made liable to a large amount, for debts about which he knew nothing, and there is no knowing, under the circumstances, how far his liability may extend. And in a recent case now in the court of appeals, there was an attempt made to make stockholders of an insurance company liable for all its debts and liabilities contract-

ed through the dishonesty of its directors amounting to millions of dollars; and under the present section of the Constitution there was a very grave question whether they were not liable for those debts, although they had no knowledge of the fraud and had lost the whole of the money paid by them for the capital stock and which was entirely sacrificed. I hope, therefore, if the original section as reported is to be adopted my amendment will prevail.

Mr. SEYMOUR—I hope the amendment of the gentleman from Chemung [Mr. Beadle] will be adopted. As he has stated, it is the section in the article on this subject in the present Constitution. Sir, as the section stands in the report of the committee, the personal liability of stockholders is extended to every corporation within the State. We have been going on, sir, for some twenty years under the present Constitution, with a liability personal only to those who are stockholders of banking corporations. There is a very good reason why they should be made personally liable, while the stockholders of the various other corporations are not so. It arises particularly from the fact that they are issuing money. The bank corporations take risks with regard to the currency and finances generally, which other corporations do not. The test with regard to the safety and security of the community must certainly depend very much upon long experience; and, so far as we have learned the experience of the public, we have found no demand anywhere that personal liability should be extended beyond the stockholders of moneyed or banking corporations, and applied to the stockholders of all other corporations. Sir, it is a matter of great interest to this State, and to every other community, to encourage corporations formed for manufacturing and other purposes, as well as those which are formed for the purpose of building railroads. It would be, in my opinion, a very serious detriment to the public if we should do anything to discourage these useful associations, by which capital is concentrated and the public interest so greatly subserved. There is no demand from the public for this provision, nor is it demanded by experience that other corporations than banking corporations should be held to this strict liability. It would operate, sir, as a great discouragement and a great hindrance to the formation of these associations, from which the public are deriving, by the concentration of capital all over this State, in all the various forms in which it is used by these corporations, a very great and very permanent benefit. I hope, therefore, that the amendment proposed by the gentleman from Chemung [Mr. Beadle], which restricts this personal liability to banking corporations, will be adopted.

Mr. C. C. DWIGHT—I am in favor, sir, of the substitute proposed by the gentleman from Chemung [Mr. Beadle], if for no other reason than for preserving the consistency of the article. It seems to me that the sixth section, as it stands in the report of the committee, is quite inconsistent with section 2, which has been already adopted by the Committee of the Whole—"Dues from corporations shall be secured by such individual liability of the corporators and other means, as may be prescribed by law"—

clearly devolving upon the Legislature the right and the duty to fix the liability of corporators, or the means by which the dues and liabilities of corporations may be secured; whereas section 6 fixes by constitutional provision the personal liability of corporators in the very strict manner which is here employed—holding them personally responsible to the full amount of their respective shares in the stock of such corporations. The amendment proposed by the gentleman from Chemung [Mr. Beadle] limits this constitutional prescription of liability to banking institutions, and leaves it consistent with the section which has been already passed upon by the Committee of the Whole.

Mr. DUGANNE—One of the most encouraging signs of the times is the tendency which now exists toward establishing a co-operative system of labor—a system which proposes to combine individual labor in associations. It is well known that the working men, the laborers and mechanics of this country, are not men of large means, and what little means they possess they are chary of risking by speculation; and yet we must confess that if this co-operative movement should obtain public support, and be generally accepted over the country, it would be of very great importance to the industrial interests of this State. I think the clause, of individual liability, as reported in this section, would have the effect of impairing the confidence of our laborers and mechanics in the co-operative system, and would make them reluctant to invest what little means they have in any corporate society whose members shall be held individually liable for the debts of the concern. On this ground, if on no other, because, as I understand the original proposition, it seems to me that it would endanger the success of a praiseworthy co-operative movement, for industrial and manufacturing purposes, I shall be in favor of the amendment of the gentleman from Chemung [Mr. Beadle].

Mr. BALLARD—I would like to say one word in vindication of the proposition of the committee. This section now under consideration did not meet with the approval of all the members of the committee, and it was finally reported in its present shape, in great doubt as to its propriety. But it was concluded to submit it in its present shape for the action of this body. In reference to the alleged incongruity between the second section and the section now under consideration, it will be seen that the same incongruity exists in the present Constitution; because, in the second section of the present Constitution the language is the same as here reported, with the exception of the provision in regard to corporations for banking purposes—our seventh section being a general one. It was concluded, therefore, to report the whole matter in its present shape, and leave it for the action of the committee.

The question was put on the substitute of Mr. Beadle, and it was declared carried.

Mr. CHESEBRO—I desire to add as an amendment to the amendment as adopted by the committee the following:

Add to the sixth section:

"And the stockholder of every banking institution or corporation transacting business in this

State, shall be individually and personally liable for his proportion of all debts and liabilities of said institution or corporation."

It will be seen that the modification as proposed by myself to the amendment which is adopted by the committee is simply in this respect—that it makes stockholders individually and personally liable for all debts of the corporation or banking association, proportionally to the amount of their stock; that is, that each stockholder is proportionately liable for the whole amount of the debts of the corporation. The design of the amendment is manifest, I think, to the committee; at all events I can explain it in a moment. It is to make the stockholders personally liable for the deposits in a banking institution, as well as for any other debts or liabilities which it may own. There was an amendment adopted this afternoon on motion of the gentleman from New York [Mr. Garvin] giving a preference to billholders over other creditors in the corporation, and although that amendment was adopted, I think sufficient consideration was not given to it at the time. I have never been able to see any reason for a distinction between the liability of a banking institution to a billholder from that which exists to a depositor in any institution; because they have either a special charter or are incorporated under a general law, and the company goes into the business and the community places confidence in it upon the faith of the incorporation created by the State. It therefore obtains a degree of confidence in the community that induces the people to trust the institution, and the community generally are induced to make deposits in the bank, thereby creating a liability on the part of the bank. The bank trades upon this capital. It may be an institution created with a capital of \$50,000, added to which there are deposits say to the amount of \$200,000 or \$500,000. Its actual capital is this amount of money, deposited in the institution by a confiding public; and it is upon that capital that the stockholders of the bank trade, and from that they receive their profit. Now, sir, I have never been able to see, and I do not see any reason why the stockholders, receiving this amount of money, it being the duty of the directors to take care of it, should not be individually and personally responsible to the depositor for the amount of the money thus received. An individual is responsible for the amount of any deposit made with him, and why should a corporation, or aggregation of individuals, receiving the deposits of the community, not be as responsible as an individual? They certainly should have no exemption or immunity from the fact that they are organized under a general law of the State, and have received their authority to enter upon this banking business from the State. I say that this would be a wholesome check upon the system which will probably be inaugurated at some time or other in this State, of a banking system—a check upon the conduct of these institutions; and I say it is no more than just to the depositors that they should be protected as well as the stockholders.

Mr. HALE—I think my friend from Ontario [Mr. Chesebro] must have misapprehended the effect of the amendment just adopted by the com-

mittee. As I understand it, the substitute makes the stockholders liable for all the debts and liabilities, of every kind, of the corporation.

Mr. CHESEBRO—I do not so understand it.

Mr. HALE—That is the language. The liability is only limited to the amount of their respective shares.

Mr. CHESEBRO—Precisely. That is the difference between the amendment of the gentleman from Chemung [Mr. Beadle] and mine.

Mr. HALE—With that explanation, Mr. Chairman, I hope that the amendment of the gentleman from Ontario [Mr. Chesebro] will not be adopted. If I understand it, it proposes to make the liability of the stockholder unlimited, so that a person owning one share in the stock of a bank, to the amount of only a hundred dollars, would be liable as a partner, or liable beyond the amount of his stock.

Mr. CHESEBRO—If the gentleman will observe the language of my amendment, it is this—that the stockholders should be *proportionately* liable. If a stockholder holds a hundred shares he will be liable to an amount of the debts in the same proportion which the shares he holds bears to the whole number of shares.

Mr. HALE—If I understand it, then, if he owned a thousandth part of the stock, he would be liable for a thousandth part of the liabilities.

Mr. CHESEBRO—Precisely.

Mr. HALE—That, I think, is objectionable. I perceive that it is different from the amendment adopted by the committee; but I think it better that the liabilities of a stockholder shall not exceed the amount of his stock. As it now stands, the stockholder of the bank cannot be made liable beyond the amount of the stock that he holds; as it would stand with the amendment of the gentleman from Ontario [Mr. Chesebro], he may be liable to an amount much exceeding the amount of his stock. I think we should not go further than the Constitution has heretofore gone upon that subject, and that we should limit the possible liability of an individual stockholder to the amount of stock that he owns.

Mr. MAGEE—I rise, sir, to oppose the amendment of the gentleman from Ontario [Mr. Chesebro]. It strikes me that that gentleman has not taken time to reflect upon the effect of it. What, sir, is the object of a corporation organized under our general laws? It is to concentrate capital for the benefit of the community in which it is formed, with a limited liability—a liability to lose the capital put in, and a liability to lose an equal amount. There the liability terminates. Let us suppose for a moment, sir, that the amendment of the gentleman from Ontario [Mr. Chesebro] should be adopted. What man of ordinary sense would put his capital into an incorporation if he is to become jointly and severally liable, for all the debts and liabilities in case of insolvency? What will be the effect if the stockholders of the corporation are constantly changing—the stock to-day being in the hands of men of responsibility, and to-morrow going into the hands of irresponsible parties? Who will put himself in the condition of becoming a partner with unknown persons? I think no man will do it. Suppose this amendment is adopted; do you think any man of responsibility will remain a

stockholder in a corporation? Certainly not. If he could not sell his stock honestly he would put it into the hands of a man of straw; he would put it into a place where it could not be reached, beyond the loss of the money he put in. I hope the amendment will be voted down.

The question was put on the amendment of Mr. Chesebro, and it was declared lost.

The question then recurred on the amendment of Mr. Beadle, and it was declared carried.

Mr. PAIGE—I have an amendment which I propose to insert as the seventh section, and which I will read:

“The Legislature shall pass laws providing a scheme or plan which will so far as is practicable, secure an equal representation to all the stock or shareholders of stock corporations in respect to the number of shares of stock owned by them respectively, and a direct personal representation to each of the said stock or shareholders in the board of directors, trustees or managers of their respective corporations.”

If there is any class of citizens who require protection it is the class of minority stockholders in stock corporations. They have no participation, not the least in the management of their own property. All other persons interested in a common property have and are entitled to have a share in its management. But in the case of stock corporations a majority of the stockholders elect a board of directors, and those representatives have the exclusive management of the concerns of the corporation, to the entire exclusion of the minority of the stockholders. The minority stockholders have no more power of interference in the management than if they had no interest whatever in the institution. They have not even any means of ascertaining what contemplated measures or schemes are at any time about to be initiated by the board of directors. They may be schemes or measures to advance the personal interest of the directors or of those they immediately represent and greatly prejudicial to the interests of the general stockholders, and especially of the minority stockholders who are not represented in the board of directors or trustees. Now, sir, upon principles of justice, these stockholders should have a representation in the board of managers in the management of the common property proportionately to their interest in the stock; and this proposition which I have introduced, I think, will accomplish that object. It makes it imperative upon the Legislature to provide a plan for their representation; and it appears to me that it can be done with very little difficulty. An impression has been produced that such a scheme of representation is not practicable; but it appears to me that the fact is otherwise. And if not, sir, this section will be harmless. The Legislature is required to provide by law a scheme of representation so far as is practicable; and, sir, the scheme of cumulative voting for a portion of the board of directors proportionately to the number of shares of the stockholders who vote for them, will produce the result which this section contemplates. It seems to me, therefore, sir, that the protection of this class of stockholders in stock corporations requires us to provide them with some means to defend them-

selves against the action of the directors prejudicial to their interest in the common property of the corporation, and I hope that my proposition, having this object in view, will commend itself to the favorable regard of the Convention.

Mr. GREELEY—It seems to me that the end here sought is precisely the same that I unsuccessfully labored for in the formation of districts for the election of Senators and Assemblymen. That is to say: let us suppose a stock company of any kind has nine thousand shares and nine trustees or directors. Now the rule should be, as I think, that every portion of the stockholders should elect its share of the directors. For instance: let us say that the shares are nine thousand, and that the directors are nine in number. I think each thousand shares should be allowed to choose one director. A majority of the stockholders, if there were any antagonism of interest, would choose a majority of the directors, while the minority would choose a minority of the directors; and thus, while the power would remain in the hands of the majority, the ability to watch that power, to guard against imposition and to correct or protest against wrong, would be in the hands of the minority. At all events, there would be no cloak of secrecy shrouding the action of the majority. I deem this a very salutary and righteous proposition, and I trust the committee will sustain and adopt it.

Mr. CASSIDY—I hope this proposition will find favor with this Convention. It is one of much importance. We have been discussing the formidable nature of corporations, their power and their influence over public opinion, their control of legislation, and have sought in vain to counteract them. This amendment accomplishes the internal reform of corporations by placing a check, within the boards of direction, upon mismanagement. It gives what has always been denied in this country—a representation to the minority of shareholders. As corporations are now organized, the owners of a majority, by a single share of stock, control the whole representation in the direction, while the power of the minority is absolutely nullified. Nothing is more simple, nothing more easy than this proposition. It is practicable throughout. My only hesitation in regard to it is as to whether it belongs to a Convention to place it in a Constitution, or whether it should be left to the Legislature to mature and to embody in the general laws affecting corporations; but I hope that it will receive our favorable vote, so that it may go to the Legislature with the sanction and approval of this body.

Mr. A. J. PARKER—I hope this amendment will prevail. We must all agree, I think, that it is a very great evil where there is a struggle for the control of a corporation, for a successful party electing the directors by a bare nominal majority to the entire exclusion from participation of the minority—nearly half, it may be, of the stockholders. The consequence is it is managed mainly for the benefit of the majority, for the benefit of the directors who have in the mean time the control, and not for the benefit of all the stockholders as it should be. Now, the only way to correct this evil is to devise some system by which the minority may be represented at that board to watch the

directors of the majority, there should be persons always there to watch the others and see that matters are properly managed and that the funds are not perverted for the benefit of the few, but that everything is done for the benefit of the stockholders. This is simply a question for the protection of the stockholders; it goes no further. It has nothing to do with the abuse of powers beyond that. It does not limit the powers of the corporation, or guard against any evils that may flow from it; but it goes a great length to preserve the property of shareholders, and I think all will agree that this should be done. The gentleman from Westchester [Mr. Greeley] attempted to introduce this principle in regard to the election of Senators, and failed; I attempted to introduce it in another form and was equally unsuccessful. But, whatever may be the different opinions of this Convention in regard to political elections, I think there should be no difference with regard to the propriety of introducing it in the elections of corporations, with a view to the protection of all their interests.

Mr. ALVORD—I am of the opinion that the amendment will create great difficulty and trouble in the future. I believe that corporations are collected together of individuals for the purpose of acting under one single general head, in one single direction; and when gentlemen so associate themselves together, they do it with a knowledge that the majority of interest represented in such corporation or association shall direct the entire of the energies of the corporation to the end sought to be attained, and I am not in favor, for the purpose of enabling gentlemen who may belong to corporations, and who are disappointed in not getting a majority of the votes of the stockholders of that corporation, to have place, by a minority representation. While possibly there may be some excuse for it in political organizations, which I seriously doubt, it certainly will subvert the purpose and ruin the interests of the moneyed or other corporations, instead of protecting them. I trust, therefore, the amendment will not prevail.

Mr. BALLARD—This subject was before the committee, in the form of a resolution, introduced to the Convention by the gentleman from Orleans [Mr. Field], and the committee deemed that, under the general act concerning incorporations, the power to make this regulation and laws of a kindred nature was in the Legislature, that it was not necessary for this Convention to interpose its power in regard to it, and that it was better to leave the subject with the Legislature; hence the other day we reported that resolution back to the Convention with others, and asked to be excused from their further consideration. That resolution is in these words:

Resolved, That it be referred to the Committee on Corporations other than Municipal, etc., to consider the expediency of providing in the Constitution that all corporations composed of shareholders, be required to so conduct their elections of directors as to enable such number of shares to elect a director as bears to the whole number of shares represented at the election, in the same ratio as unity bears to the number of directors to be chosen.

In other words, if there were thirteen directors to be chosen, one or more persons who held thirteen hundred shares would be sure of electing one of those directors; but on consultation and consideration we deemed that it was more appropriate for legislative action than for the Convention, and hence our committee reported as we did.

Mr. COMSTOCK—I think the amendment offered by the gentleman from Schenectady [Mr. Paige] is right, and that if adopted it will be one of the most valuable provisions in the Constitution. The subject of minority representation in political affairs has very little to do with the question here. In political concerns and representative assemblies the delegate represents the opinions, passions and prejudices of the community; in moneyed corporations the trustees represent the cash or capital which is contributed to the corporation, and every part of that cash or capital has an equal right, to be represented according to its amount. Now, I have no doubt whatever that the Legislature, under an imperative injunction of the Constitution, can and will do something to remedy a great evil. It may not afford a perfect remedy, but that something can be done I have no doubt. You may suppose that a board of trustees is composed of nine members, and that the Legislature shall enact a law that no stockholder shall vote for more than five of those nine members. In that case Mr. Vanderbilt, or some other great capitalist, may own more than half the stock, and if so, though he can elect a majority of the board of directors, he can not elect the whole of them; the minority can elect the other four. Those four represent the minority of the cash or capital of the corporation, and they will be present with the majority to watch their proceedings. I do not see the evils suggested by my colleague from Onondaga [Mr. Alvord] and think they only exist in his imagination. I hope, therefore, the amendment will prevail.

Mr. CONGER—"To be weak is to be miserable, doing or suffering," and I suppose, sir, that this adage is true of corporations as well as it is of individuals or political societies. Yet it is the necessary fate of all who are in a minority that they are not only subject to the maneuvers, but to the dictation of the majority. I apprehend that is part of the contract when men associate themselves for the purpose of accomplishing results of gain, on a plan by which they not only renounce individual liberty, but individual responsibility. No man in a corporation, unless he is one of the majority and at its head, is held to be in the least degree morally responsible for the acts of that body. The corporation is chartered as a thing without a soul and without a conscience to work out either gain or some imaginary or supposed public or private benefit. The moment you dissociate from a corporation the idea that it should be guided by the rules of a moral existence, that it is not bound to pay all its debts, and is freed from paying them, as you have here decreed to-night, by refusing to give any sort of countenance to the proposition of the gentleman from Ontario [Mr. Chesebro] that it is not bound, as a man is bound, honorably to pay all its debts or discharge all its obligations, you make it a cor-

porate machine merely for grinding out dividends. Now, then, who is to run it? That is the practical question, and it must always present itself in that and in no other light. You give to the majority the power as well as the right. Practically, in most cases, the minority are hardly denied a representation in a board, for I apprehend that very few men, in proposing a ticket in a large corporation, mean to shut out from those with whom they differ all sort of chance of representation in the board. They generally manage to get rid of their bitterest opponents, and they will seek moderate men who represent the minority comparatively as well as the men who are most ultra. But what I wanted to get at was this idea: that you cannot undertake to impose by law what ought to be really a part of the agreement which men should make with one another when they associate. If they mean when they start to give the minority a representation that should be a part of the original compact, and it should not be forced by law in a corporation or in articles of agreement which have been founded on another basis. All corporations that have heretofore been chartered have made this bargain: that the majority shall rule, and shall be responsible to the extent of the responsibility exacted by law. Now, then, to interpose by a constitutional or a legal provision, and strike away the whole foundation on which they have heretofore based themselves, is in itself a violation of the primary obligation which society owes to those it has incorporated or chartered for special purposes. It is really, when you look at it in that light, a *primum mobile* of mischief and bad faith on the part of society; and it is in that point of view that I object to incorporating in the organic law any such provision. I doubt, sir, if we were sitting here as a Legislature that we would be willing to pass such a law, as is here proposed to be organic, to be retroactive in its effects upon all existing corporations, or to mould anew the principle of their organization. For these reasons I think that it would be imprudent, to say the least of it, for us to undertake now to make a new regulation affecting all existing corporations, though I should have no serious objections to the application of this principle to corporations hereafter to be chartered.

Mr. HALE.—The objections that are made by different gentlemen upon this floor to any proposition for a minority representation, in any form, vary very greatly, and are, to my mind, exceedingly inconsistent and unsubstantial. The remarks of the gentleman from Rockland [Mr. Conger], who has just taken his seat, are based upon the supposition that any proposition like this now before the committee, or like others that have been presented and have been voted down, would, if adopted, deprive the majority of their just preponderance and power. There was never a greater mistake than this. No proposition of this kind, contemplates taking power away from the majority; it contemplates merely confining the majority to that proportion of power to which their numbers entitle them. Now this proposition, made by the gentleman from Schenectady [Mr. Paige], does not propose to put boards of directors of corporations under the control of a

minority; on the other hand it makes the control of a majority certain; but it gives the minority only its share of representation upon the board. We will suppose a corporation in which there are precisely thirteen hundred shares, and thirteen directors to be elected. We will suppose that the stockholders of that corporation are divided upon some great question of policy, that the owners of five hundred shares are in favor of a certain course of policy, and the owners of eight hundred of another. Now, what is the fair division of power between the majority and the minority of that board? Is it proper, and is it right, that the five hundred should be deprived of all voice, should be deprived of every chance to be heard upon that board, and that the owners of the eight hundred shares should compose the whole board? It seems to me clearly not. To my mind the correct division is that the owners of the eight hundred shares should have eight directors to represent them, and the owners of the five hundred shares five directors. And it seems to me, that that same principle applies wherever you have a representative government or a representative administration of affairs; that the majority should control just in proportion to their numbers, and that they should have just that weight in the governing board to which their numbers entitle them. As I was saying at the outset, the objections that have been made have been so various and so inconsistent as to be somewhat amusing. My friend from Onondaga [Mr. Alvord] objected to its application here because this is not a political board. Sir, we have had speeches made here over and over again, objecting to the proposition when undertaken to be applied to the Legislature, and because the political minority would get the advantage. There is nothing in the argument on one side or the other. If the principle is a sound one, it is sound when applied to a board of directors of a corporation, as well as when it is applied to a Legislature. I see by the papers that the gentleman from New York [Mr. Duganne] objected to the proposition of the gentleman from Westchester [Mr. Greeley], in regard to the election of members of the Legislature; and he used, as an argument I suppose, an allegation that it was a "poetical rather than a practical doctrine." Now, I will concede that the poetical gentleman from New York [Mr. Duganne] is a far better judge of poetry than probably any other member of this Convention. His pursuit entitles him to that credit; but I must beg leave to doubt whether he is a better judge of what is practical than some other members of this Convention, who have no claims to poetic eminence. He can discern poetry in these propositions, and I dare say that he is the only gentleman on this committee who can see anything poetical in them; with my limited knowledge of poetry and practice, I cannot see how it is anything but practical and most eminently practical. Another gentleman [Mr. Merritt] objected that although it might apply to a monarchical form of government it would not do in a republic. Mr. Chairman, it seems to me the place of all others where this doctrine can be applied successfully is in a republic, and that it cannot be applied in a monarchical form of govern-

ment, except so far as in some of its institutions a monarchy has adopted the principles of a republic. I hope, Mr. Chairman, that this proposition of the gentleman from Schenectady [Mr. Paige] will prevail. As I understand it, it does not attempt to point out the details by which provision shall be made for this personal representation in boards of directors; it leaves that entirely to the Legislature, but it merely imposes upon them a requirement that they shall in some way, adopt measures which will give this personal representation. The only objection (and the only sound objection) that has ever been made on this floor to the doctrine of minority representation, viz.: that as to its practicability, is one which cannot apply to this proposition introduced by the gentleman from Schenectady [Mr. Paige]. There can be no difficulty whatever in the election of boards of directors under this system; it being known at the outset just how many votes are to be cast, how many shares there are to be represented, the number of voters being of course extremely limited; there can be no difficulty in putting into practice the system which is known as Hare's system, or some other system, of personal representation; perhaps one like that recommended by the Personal Representation Society of New York. There can be no difficulty in applying some one of the many ways suggested to elections of boards of directors; and I hope the amendment of the gentleman from Schenectady [Mr. Paige] will be adopted.

Mr. BEADLE—I am extremely at a loss to know whence and from what interest this proposition before the committee emanates, for in the discussion we have had in the past four days since the subject of corporations has been before the committee, it seems to have been the desire of every gentleman addressing this committee to disclaim all possible or impossible connection with any corporation; hence, sir, I assume that no member of any corporation is asking this thing at the hands of the Convention. Whence then, sir, does it come? If members of the corporations of this day are not asking this thing at the hands of this Convention, why is it this proposition comes, and why this discussion with reference to it? Is it from the people? Do the people of the State of New York fear that we are never henceforth and forever to have any corporations within its limits? Do they fear that because they may not be represented properly, that if they fall unfortunately into a minority that their rights will not be subserved, and hence they will withdraw themselves from all connections with corporations? Is that to be the result? Sir, for the last twenty years the same law has existed with reference to corporations as it exists to-day. Open your statute books for the past year, and of the laws enacted you will see that of the original and amended acts in reference to corporations you have six hundred and two, outside of the city of New York, coming here before this Legislature, each for original acts of incorporation or for amendment. Is it likely that corporations will fail? I apprehend not. I apprehend that we shall have incorporations in this State for long years to come, but my objection to the amendment is the one alluded to by my friend from Essex [Mr. Hale],

that it is entirely impracticable, and there is no necessity for it; and if it is not asked for by the great body of corporators—no wrong, no injustice has ever been complained of—why incorporate in the Constitution this provision? One of the great doctrines of this country is that majorities shall rule. It would seem that those urging this amendment, introduced the proposition upon the hypothesis that there was a diversity of interests in corporations, as for instance that the stockholders represented diverse and different interests, and when an election is had, these interests are brought to bear in the selection of directors to represent the carrying out of these interests. Most certainly nothing of that kind ever occurs. A desire to get control and obtain power is often apparent and will likely continue. Is there a diversity of opinion in this great railroad monopoly that we have heard of for some days? There is a conflict of interest as to who shall have the control, but there is no difference of sentiment as to the running of cars between Albany and Buffalo. I grant you, sir, there are interests that seek to get control of the corporation, but there is rarely a diversity in the majority in reference to conducting the business of that corporation.

Mr. EVARTS—There is certainly much in this proposition, especially when it is supported by so many grave opinions of gentlemen whom we so much respect, that many incline to its adoption; and I rise for the purpose of suggesting that we should not be misled by these plausible and favorable considerations nor by our being able ourselves to conceive particular grievances or aggravations in the management of corporations, for which this might be a pertinent and a present remedy. You will observe, Mr. Chairman, that by the imperative obligation upon our Legislature, already imposed by this article as we have framed it, all corporation laws are to be general. We are not, therefore, in a position to try an experiment upon a single or upon a few corporations, nor upon one class of corporations; but we are to have now a change of corporation law, in one of the particulars that has been of its essence and of its virtue, since corporations were first used, to be a permanent and universal rule for the corporations of this State. For, Mr. Chairman, the principle that the majority should rule—that there should be a decision, but when the decision was once made, all interests should thenceforth concur that the major voice should have its sway, and there should be a head, and a lead unembarrassed by continual debate and infirmity—found its origin in these private corporations. Its success and its vigor and its prosperity, as there developed, led to its adoption into our political society, and it has become, as it is, in my judgment, the moving cause of the power of American political communities. The proposition is exactly here, that the contest shall be made between the constituent elements of the interests involved, whether it be a private corporation or a political body, and the major voice thus expressed, shall, for the term, and in the representatives thus provided, be all one way. Mr. Chairman, can any one point to a moneyed or trading corporation since the term was used, since the instrument was

brought into play, that had its board of directors made up upon the principle of continuing forever through its organization, proportionate diversity of opinion? What is the gain? Nothing but continued debate; because, finally, the majority of the representatives govern. As in the instance proposed by my friend before me [Mr. Hale], of eight directors of one view and five of the other, elected by that proportion of stockholders, the minority, in the end, would be unrepresented by an actual power. What power do they have afterward? The eight govern the five unless you were to carry this representation of the opinion and wishes of the minority to this absurd result, that in every measure to be adopted by the board, the opinions are to be amalgamated in the proportion of five to eight. As, for example, if the proposition is whether a railroad shall be built thirteen miles long or one mile long, and eight of the thirteen are of one view and five of the other, that you will build it at the mean length of six or seven miles. After all, it comes to this, that the minority do not wish to yield, and when they are *out-voted*, they perversely consider themselves *disfranchised*. Mr. Chairman, our boards of directors are appointed for but a year. Power returns to the stockholders at the end of that time, and though we may imagine cases, or cases may have presented themselves to our observation in which there seems to be at times an actual subjugation of the minority, a usurpation and tyranny, yet, after all, for the most part, we know that the contest between stockholders terminates with the election, and that they are better served by the predominance, once for all, for the short term of a year, of the general counsels which are represented in the body directing an institution, where energetic action and firm decision are of the first importance. Now, Mr. Chairman, if we could turn to even a limited experience to guide us in this matter, I should feel less hesitation in adopting into the laws or the Constitution of this State this expedient. As it is, I must confess, as corporations are founded upon the opposite idea, to get rid, among other things, of the discordant views of many partners, which in a large partnership, would bring irresolution, indecision, divided counsels, into the business—as from the first foundation until now it has been of the essence of their constitution, that the majority shall govern, as from these corporations it has been adopted into our political society as a maxim, as it has been prosperously worked out in our career, to the magnificent development of the great results we have attained and which surround us, until some one can give me some better reason than has been pronounced here, or can point me to some beneficial action of this constant proportionate division of opinion, I shall hesitate to adopt this amendment.

Mr. DUGANNE—I should deem it a very great hardship if, in a combination of three partners, two of them could assume, being the majority, to exclude the third from any participation in the affairs of the company. And were corporations, such as we are now treating of, mere aggregations of partnership for individual interests, personal interests, I should be in favor of having

some modification of this minority system in the conduct of their affairs by such corporations. But, sir, corporations only represent capital—money; and money is very tender on all questions affecting its own interests. It may, therefore, be very safely left to the majority of a moneyed corporation to take care of its concerns whenever they affect its financial interest; and if the minority shall feel aggrieved, personally or otherwise, by the election of certain persons to be directors of a company, or if they shall feel dissatisfied with any action taken by such directors, they have the right—which citizens in political life cannot have under the majority rule—they have the right or privilege, I say, of retiring from the company, and disposing of their interest in it. Now, sir, my position and opinions upon this minority representation are sufficiently pronounced. I do not think, however, that I have brought in to the aid of those opinions any poetry whatever. I think it will be conceded to me that, among all the gentlemen who have spoken in this chamber, and who have made quotations so eloquently and appositely upon any subject, I, myself, have, perhaps, been the only one, or one among the few, who have refrained from quoting poetry at all. And, sir, I do not think that I shall call upon poetry to assist me in my present argument. I hold in my hand an article containing the opinion of a gentleman who will not be considered a very poetical gentleman, who, I believe, is acknowledged to be rather of a statesman, rather of a practical man, rather of a true reformer. I allude to John Bright, of England, who says, in relation to this scheme of minority representation:

“He asked his countrymen to reject this device of their opponents, because it was a principle disastrously fatal to everything which we comprehended, and which our forefathers had comprehended, of the true principle of popular representation. He infinitely preferred the practice of the robust common sense of those who had gone before us, to this new scheme which was offered to us with so many professions for our good. He regarded it—he said it without fear of whomsoever it might strike—as the offspring and spawn of feeble minds. It might have been, for aught he knew, born of eccentric genius; it might, and probably had been, discovered in some of those abysses in which the speculative mind oft delights to plunge; but he preferred, he said honestly, that which our forefathers understood of freedom of popular representation, of the mode of manufacturing a great Parliament, to any of those new-fangled and miserable schemes which have come to light in our day.”

Now, sir, I do not find anything in this article—as I have not found anything in the arguments so persistently presented to us on this floor, in favor of minority representation—to change my opinion that, in the material and practical concerns of human life, as in matters of politics, the majority should rule, correct abuses, and right wrongs.

Mr. FIELD—I would inquire if an amendment is in order?

The CHAIRMAN—An amendment is in order.

Mr. FIELD—Then I offer a substitute for the

amendment of the gentleman from Schenectady [Mr. Paige].

The SECRETARY proceeded to read the substitute, as follows:

SEC. 7. The Legislature shall provide by law that all corporations composed of shareholders shall be required to so conduct their elections of directors as to enable such number of shares to elect a director as bears to the whole number of shares represented at the election the same ratio as unity bears to the number of directors to be chosen.

Mr. FIELD—The advantage of this amendment, it seems to me, over the one proposed by the gentleman from Schenectady [Mr. Paige] is that this points out definitely the manner in which the purpose sought can be accomplished. It provides an exact method. It says that if thirteen directors are to be elected, then one-thirteenth of the shares represented shall elect a director, two-thirteenths shall elect two directors, and seven-thirteenths seven directors. Or, if instead of thirteen directors there are nine, then one-ninth of the shares represented will elect a director, two-ninths will elect two directors, and so on. Thus it is seen that this amendment points out expressly the manner in which the election shall be conducted, and leaves to the Legislature very little to do; a little matter of detail, which is plain and simple. But, Mr. Chairman, either amendment accomplishes the result sought; and the whole question here is simply this, whether it is desirable in boards of direction that all the share owners shall be represented; whether all shall be heard or only a part. If it is not desirable, then, of course, this proposition ought not to be adopted; but if it is, then it should be. There is no question involved here at all as to whether majorities should rule. This plan recognizes that right. The question is simply, shall minorities be represented? Majorities are to control under this method, the same as they do now, where the majority elect the entire direction; just as in legislative bodies the majority rules, although the minority is represented. The present method of electing directors is analogous to electing one hundred and twenty-eight members of the Assembly of this State on one ticket, and of one party. But if there is a considerable minority, the majority rules, just the same as if the minorities were entirely excluded. So it comes back simply, as I said, to the question of whether it is desirable that all interests should be represented in boards of direction. It strikes me that a very great advantage in electing representatives of minorities would be to do away with the distrust and suspicion, the want of confidence that is felt in the directors of incorporated companies. If the minorities are entirely excluded they do not know what is going on in the organization; they are suspicious and distrustful, and in this way great injustice is sometimes done to boards of direction by this distrust, this want of confidence. It would be greatly to the advantage of the company, and for the ease and comfort of the managers, if the minorities were represented, and had the means of knowing and seeing that the affairs of the company were honestly and intelligently conducted.

Mr. FOLGER—I move that the committee do now rise, report the article to the Convention and recommend its passage.

The CHAIRMAN—There is an amendment pending.

Mr. FOLGER—Does that make any difference, is not the motion in order?

The CHAIRMAN—The Chair supposes it is hardly in order, while an amendment is pending, to do anything except to report progress.

Mr. HAND—I see no possible objection to the passage of this amendment, and I certainly have heard no argument on that side that is legitimate or that goes in reality to oppose the passage of this amendment. The objection that has been brought forward and repeated by every member who has spoken on this subject, in opposition to the amendment has been that it is a rule of operation in all corporations that the majority shall rule. This amendment does not forbid that. It allows the majority to rule, as it always has ruled. The minority cannot elect a majority of the directors. In the board of directors there is still a majority, and the voice of the majority will rule in all its proceedings. You make stockholders liable to an amount equal to their stock for all debts. An attempt has been made to place upon them an unlimited liability, but their liability, as we have passed it, is equal to the amount of their stock. It seems to me that every stockholder should be protected to the full extent that human ingenuity can devise a method of protecting them. These banks become insolvent, and stockholders lose their stock by "wild-cat" schemes of speculation that bank corporations go into of doubtful propriety, and which are discussed and are well understood among the stockholders of banks. It is well understood *who* favor such schemes and *who* are opposed to them. Those who propose to go into those schemes—the majority of them—are careful to elect such directors as will favor the schemes they desire, at the risk of the great mass of the stockholders. The advantage we claim of a minority having their full share of directors is that they may watch every proceeding of doubtful character, and use such influences as they may to prevent these speculations that incur so great a risk in the operations of the banking institution. If the minority is represented, then they can watch these proceedings, and it is impossible that any reckless scheme can be entered into without stockholders of all interests knowing it and the minority can sell their stock before the final catastrophe comes; but if they have no representation they are unable to do it. The gentleman from New York [Mr. Evarts] has said that this plan would keep up a constant bickering among directors. That argument is just as applicable to any representative body as it is to a board of directors. Suppose the last Legislature in passing the law authorizing this Convention, had determined that all the candidates should be elected on a general ticket, as the board of directors of an incorporation are chosen. It had the power to do so. If it had so enacted, the argument of the gentlemen on this subject would apply to that equally well. In the Convention

assembled here there would be less argument and less debate than there is now, and a Constitution could have been drawn up and manufactured and passed without any contest, and all the evils which the gentleman says grow out of bickering and discussion would have been omitted in this programme. But we have the minority represented here, and represented with a force that they were not really entitled to, according to the due weight they have in the State, for the purpose of having full discussion. The plan pointed out and devised by the resolution before us is like dividing the State into districts. It divides the bank stock off into portions, and each portion is represented by its director, thus giving a just representation so that the minority shall have its true moral influence in the discussions of the board to avert any catastrophe that threatens it by great risks incurred, by going into operations not legitimately belonging to banking. No evil has been pointed out as resulting from this plan. I have yet to hear in any of these discussions of any evil that can occur from the adoption of the proposed plan, but great good, by having all the interests represented. And all the influence that may be brought to bear to prevent the evils of a certain kind of banking operation that we know result in the loss of the stock and the insolvency of the bank. I hope, therefore, that this amendment will pass.

The question was then put upon the substitute of Mr. Field for the amendment of Mr. Paige, and it was declared lost.

The question recurred and was put on the amendment of Mr. Paige, and it was declared lost.

Mr. MERRILL—I move that the committee do now rise, report the article to the Convention and move its adoption.

The CHAIRMAN—If there are no further amendments pending the motion will be entertained.

Mr. KERNAN—I move that the committee rise, and report the article to the Convention.

The question was then put on the motion of Mr. Kernan, and it was declared carried.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. E. BROOKS, from the Committee of the Whole, reported that the committee had had under consideration the joint report of the Committee on Currency, Banking and Insurance, and the Committee on Corporations other than Municipal, had gone through with the same, had made sundry amendments to the same, and had instructed their Chairman to report the article to the Convention, and recommend its adoption.

The question was then put on agreeing with the report of the committee, and it was declared carried.

The PRESIDENT—The article will be referred to the select Committee on Revision.

Mr. FOLGER—I ask leave to offer a resolution at the present time.

The PRESIDENT—No objection being made, leave is granted.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That when the Convention takes a

recess at two P. M. to-morrow, the recess be until half-past three o'clock P. M., and that the Convention adjourn to-morrow on or before seven o'clock P. M.

The question was put on the resolution of Mr. Folger, and it was declared carried.

Mr. SCHELL—I move to reconsider the vote just taken, referring the article on corporations to the Committee on Revision, with a view of having it considered by the Convention before it is thus referred. I would like to have the amendments proposed considered by the Convention.

Mr. BARKER—It was understood by gentlemen in this part of the house the vote was on reporting the article to the Convention, that it might be considered here, and amendments proposed to it.

The PRESIDENT—The Chair distinctly put the question on agreeing with the report of the Committee of the Whole.

Mr. BARKER—I think I am not in error in representing the sentiment of this part of the house.

Mr. WEED—The motion to reconsider will be in order to-morrow morning, and I move that the Convention do now adjourn.

The question was then put on the motion of Mr. Weed, and it was declared carried.

So the Convention adjourned.

WEDNESDAY, August 21, 1867.

The Convention met at half-past ten o'clock A. M. Prayer was offered by Rev. E. SELKIRK.

The Journal of yesterday was read by the SECRETARY, and approved.

Mr. BELL presented the petition of Martin Williams and other citizens of Brownville, Jefferson county, for a provision in the Constitution to secure to the people of this State the right to take and catch fish in the international waters bordering on this State, etc.

Which was referred to the Committee on the Preamble and Bill of Rights.

Mr. DUGANNE presented the petition of Chancellor Isaac Ferris and fifty-three others, citizens of New York, praying against the donation of public moneys to sectarian institutions; also three other petitions on the same subject.

Which were referred to the Committee on the Powers and Duties of the Legislature.

Mr. GROSS presented several petitions against prohibitory legislation.

Which were referred to the Committee on Adulterated Liquors.

Mr. WILLIAMS—I present a resolution passed by the grand jury of Oneida county, and ask that it may be read.

There being no objection, the SECRETARY proceeded to read the resolution, as follows:

WHEREAS, We, the grand jurors of the county of Oneida, find that among the complaints which come before us for our examination, a large proportion are for assault and battery; and

WHEREAS, In our opinion, all such cases can be disposed of with more certainty of insuring justice to all parties concerned, before justices' courts, in the localities where such offenses are committed, thereby saving the county much

expense, and the citizens, who are called upon to serve as jurors and witnesses, much valuable time; therefore

Resolved, That we respectfully invite the attention of the Constitutional Convention, now assembled at Albany, to this subject, and earnestly recommend it to make such amendments to the Constitution as may be necessary to insure the final disposition of all such complaints before the above named courts.

Dated Rome, June 10, 1867.

Mr. SHERMAN—I ask additional leave of absence for my colleague, Mr. Huntington, until Tuesday next.

There being no objection, leave was granted.

Mr. MERRILL—I ask leave of absence for two days, after the session of to-day.

There being no objection, leave was granted.

Mr. MATTICE—I ask for leave of absence for to-morrow and next day.

There being no objection, leave was granted.

Mr. MORRIS, from the Committee on the Militia and Military Officers, submitted a report.

The SECRETARY proceeded to read the article reported by the committee, as follows:

ARTICLE —.

SECTION 1. A militia force shall be maintained in order to repel invasion, suppress insurrection and to aid in the enforcement of the laws; and for this purpose all able-bodied male citizens between the ages of eighteen and forty-five years, shall be annually enrolled under such regulations as shall be established by law.

§ 2. The militia shall be divided into the active and reserve forces. The active militia shall be designated the National Guard of the State of New York; its numbers shall be fixed by law, and it shall be at all times armed, equipped and disciplined. All enrolled persons not belonging to the National Guard shall constitute the reserve force. All persons who shall have been honorably discharged from the army or navy of the United States shall be, in time of peace, exempt from service in the militia; and all such inhabitants of this State, of any religious denomination whatever, as from scruples of conscience may be averse to bearing arms, may be exempt therefrom upon such conditions as may be provided by law.

§ 3. The Governor shall be Commander-in-Chief of all the militia forces of the State; he shall appoint the chiefs of the several staff departments, his aids-de-camp and military secretary, all of whom shall hold office during his pleasure, their commissions to expire with the term for which the Governor shall have been elected. The Governor shall nominate, and, with the consent of the Senate, appoint all general officers.

§ 4. General officers shall appoint their own staff officers, who shall hold office during the pleasure of such general officers, but their commissions shall expire with the commissions of the officers appointing them. All officers of the militia shall be commissioned by the Governor, and no commissioned officer, except those who hold office during the pleasure of the Governor or of general officers, shall be removed from office unless by the Senate, on the recommendation of

the Governor, stating the grounds on which such removal is recommended, or by the sentence of a general court-martial. All commissions shall expire in ten years from their dates, except those of the National Guard reserves.

§ 5. Company, commissioned, and non-commissioned officers shall be chosen by the written votes of the members of their respective companies; and field officers of regiments and separate battalions by the written votes of the commissioned officers of their respective regiments or separate battalions; but whenever the militia shall be in active service, such right of election shall be suspended and all commissioned officers shall be appointed by the Governor, and non-commissioned officers, by the regimental or separate battalion commanders on the recommendation of their company commanders. Regimental and separate battalion commanders shall appoint their own staff officers. All officers not specified in this article shall be appointed as may be prescribed by law; and in case the election and appointment of militia officers in the manner directed by this article shall not be found conducive to the improvement of the militia, the Legislature may change the same by law, provided two-thirds of the members elected to each house shall concur therein.

§ 6. In the organization of the National Guard, the Legislature shall provide for including therein a list of reserve officers to be composed of officers of the National Guard, of not less than ten years' service in the same grade, and of officers honorably discharged from the volunteer service of the United States who may be citizens of this State. They may upon application be commissioned by the Governor with rank equal to the highest held by them, by brevet or otherwise, in the National Guard or United States volunteers, and they may be assigned to such service and be entitled to such privileges and exemptions as the Legislature may by law provide.

Mr. MORRIS—I desire to submit the following explanations for this report.

Mr. MORRIS proceeded to read the explanations, as follows:

EXPLANATIONS.

The value of a well-organized, instructed and reliable militia having been fully shown on many occasions where the ordinary police was insufficient to protect life and property, and to enforce the laws, your committee has so modified article XI in the Constitution as to perpetuate the National Guard, or organized militia, and establish it in such a manner as to make it most useful in case of need. It has been found better to have an efficient force of moderate number than to depend upon a large force not disciplined. Your committee has therefore provided for dividing the militia of the State into the active and reserve militia; the first to consist of the National Guard, and the second, all citizens between the ages of eighteen and forty-five years, not belonging to the active forces, or exempt according to law.

In order to afford opportunity for promotion, and thus encourage efficiency and zeal in the service, and at the same time provide for the retirement

of officers who may become inefficient from age, it has been thought advisable to limit all commissions in the active forces to ten years. Should the merits of an officer make it desirable to retain his services for a longer time, he can be re-elected or re-appointed; but the advantages of affording promotion are considered more desirable than those which might result from continuing officers in the same grade for life. But in order that the State may not entirely lose the services of officers who have had ten years' experience in one grade, and that they may not feel themselves aggrieved by being deprived of all military rank, your committee has provided for a reserve list of National Guard officers, upon which such officers may be placed, and which will in no way interfere with the organizations of regiments, brigades, etc. This list will also make provisions for such officers of the volunteer service as have been honorably mustered out of the United States army and may be citizens of this State. In cases of emergency the advantages of having a number of educated and experienced officers in reserve immediately available, cannot be too highly estimated.

The election of field and line officers has been retained, but general officers are to be appointed by the Governor, with the consent of the Senate.

The list of exemptions from the militia service has been increased by adding such persons as have served in the volunteer service, army and navy, or have been honorably discharged from either.

According to the report of the inspector-general for 1866, the National Guard numbered 52,247, and the reserve militia, 361,505; but as the requirements of the State cannot be anticipated with certainty, it has been thought proper to leave the number of the National Guard to be fixed by the Legislature.

Your committee is of the opinion that every proper means should be employed to encourage service in the National Guard, and to honor the men who evince their public spirit and love of country by serving faithfully in this important arm of the public defense, upon which the protection of our homes must ever depend in the hour of danger. It has always shown itself prompt to respond to the call of the State or of the general government. That it is an invaluable school for military instruction is sufficiently shown by the fact that during the recent war, according to the statement of our adjutant-general, more than twelve thousand officers in the volunteer service were furnished by the National Guard of the State of New York.

WM. H. MORRIS, *Chairman*.
J. J. SEEVER,
HENRY D. BARTO,
C. C. DWIGHT,
A. J. CHERITREE,
JOHN M. HAMMOND.

I concur in the foregoing reasons except those for the appointment of brigade commanders. I believe that the public service will be better promoted by the election of such commanders, as provided for in the present Constitution, than by their appointment as above recommended.

NORMAN STRATTON.

Mr. SCHELL—I move to call up for consider-

ation the motion I made last evening to reconsider the vote on agreeing with the report of the Committee of the Whole on the subject submitted to them by the joint Committee on Currency, Banking, and Insurance, and on Corporations other than Municipal.

Mr. WEED—I hope this motion will prevail if for no other reason than to save time. Every member of the Convention will see that if this motion does not prevail, then every member who has an amendment that he wishes to offer, and have the ayes and noes upon it, will be moving under the head of resolutions to instruct the Committee on Revision to so amend; and instead of discussing the question under the five-minute rule, and ending it as we can, in a couple of hours, we shall have for the next two weeks, twenty motions of that kind.

Mr. KERNAN—I trust the motion will prevail. It would be very unfair to many gentlemen here if it did not, as there was doubtless a misapprehension last evening when the report was adopted. I trust that we will, without any dissent, reconsider that motion and take it up in Convention.

The question was put on the motion of Mr. Schell, and it was declared carried.

The PRESIDENT announced the question to be on agreeing with the report of the committee, etc.

Mr. BARKER—I offer the following amendment:

The SECRETARY proceeded to read the amendment:

Strike out the last paragraph of the first section, which reads as follows:

"No consolidation of railroad corporations shall be authorized by the Legislature when the aggregate capital shall exceed twenty millions of dollars."

Mr. GREELEY—I call for the ayes and noes on the amendment of Mr. Barker.

A sufficient number seconding the call, the ayes and noes were ordered.

The SECRETARY proceeded with the call of the roll.

On Mr. Evarts' name being called—

Mr. EVARTS—I ask to be excused from voting. I would vote aye, but I have paired off with Mr. T. W. Dwight.

There being no objection, Mr. Evarts was excused.

On Mr. Gerry's name being called—

Mr. GERRY—I ask to be excused from voting, as I have paired off with Mr. James Brooks.

There being no objection, Mr. Gerry was excused.

On Mr. Landon's name being called—

Mr. LANDON—I ask to be excused from voting: I have paired off with Mr. C. C. Dwight. I would vote aye, and he would vote no.

There being no objection, Mr. Landon was excused.

On Mr. Morris' name being called—

Mr. MORRIS—I desire to be excused from voting, as I have paired off with Mr. Case.

There being no objection, Mr. Morris was excused.

On Mr. Prosser's name being called—

Mr. PROSSER—I ask to be excused from voting; I have paired off with Mr. Lowrey. There being no objection, Mr. Prosser was excused.

On Mr. Verplanck's name being called—

Mr. VERPLANCK—I was absent on leave during the discussion on this subject; I, therefore, ask to be excused from voting.

There being no objection, Mr. Verplanck was excused.

The Clerk proceeded with the call, and the question was declared lost by the following vote:

Ayes—Messrs. Andrews, Archer, Barker, Beadle, Beals, Bergen, E. Brooks, Bickford, Carpenter, Chesebro, Church, Colahan, Conger, Daly, Endress, Perry, Fullerton, Garvin, Graves, Greeley, Hale, Hitchcock, Hitchman, Jarvis, Krum, Larremore, M. H. Lawrence, Loew, Merrill, Merwin, Monell, Pierrepont, President, Robertson, L. W. Russell, Schell, Seaver, Silvester, Sheldon, Sherman, Stratton, Strong, Tilden, S. Sownsend, Van Campen, Weed, Wickham, Young—48.

Noes—Messrs. Alvord, Armstrong, Axtell, Baker, Ballard, Barto, Beckwith, Bell, Bowen, E. P. Brooks, Champlain, Clark, Clinton, Cooke, Corbett, Curtis, Duganne, Eddy, Ely, Field, Folger, Fowler, Francis, Fuller, Goodrich, Gould, Gross, Hadley, Hammond, Hand, Hardenburgh, Harris, Hatch, Hiscock, Houston, Kernan, Kinney, Lapham, A. Lawrence, Lee, Ludington. Magee, Mattice, More, Opdyke, Paige, A. J. Parker, C. E. Parker, Pond, Potter, Prindle Rathbun, Reynolds, Root, Roy, Rumsey, A. D. Russell, Schoonmaker, Smith, Van Cott, Wakeman, Wales, Williams—63.

Mr. BARKER—I offer the following further amendment.

The SECRETARY proceeded to read the amendment, as follows:

Amend section 1 of the report by adding thereto the following:

“Provided, The effect of this prohibition does not prevent consolidation between companies, when the capital stock is below five millions of dollars, nor when one of the companies is incorporated under the laws of another State or States.”

Mr. BARKER—I desire to say one word in support of my amendment. I have not been very precise in the language I used, because I had not before me the language of the amendment adopted by the Convention, and offered by Mr. A. J. Parker, of Albany. The present amendment, as adopted, prevents consolidation between any companies where the capital of either road amounts to twenty millions of dollars. The object of my amendment is this: to allow consolidation between companies where the capital stock of either is below five millions, so that the great corporations in the State—the great stem roads—the New York Central and New York and Erie, may consolidate with local roads—roads that are under the patronage and are fostered by these great trunk roads. For instance, there are some six or eight roads that are feeders of the New York and Erie that have their termination in the western part of the State, and connect with the New York and Erie road west of Elmira—all these roads are sustained and supported

and built by the capital of the friends of the New York and Erie railroad, and I hope this Convention will not participate so much in the local feeling that voted in the amendment of the gentleman from Albany [Mr. A. J. Parker] as to prohibit the friends, the gentlemen who furnished the capital to construct these local roads, from combining them with the main stem, and thereby favor and facilitate the carrying on of local business and cheapening local freights. Another purpose of my amendment is that the great trunk railroads of this State may have the power to consolidate with railroads that exist in the West. The State Line railroad company, which has been built and fostered much by the New York Central railroad, has within a month consolidated that road from the State Line to Erie. Now I propose to allow these roads to continue this consolidation until they can control thoroughfares that extend to the great centers of business in the West, where all the railroads of adjoining States are concentrating their lines, and are this day controlling the business; I mean the Pennsylvania Central—

Here the gavel fell, the gentleman's time having expired.

Mr. A. J. PARKER—I do not propose to renew this discussion. Time enough has been occupied by it. The amendment adopted is ample to cover every case of consolidation. I, therefore, move the previous question upon the first section of the article.

Mr. PROSSER—I move further to amend as follows:

“Amend so that roads with a capital of not exceeding \$6,000,000 may consolidate.”

I ask Mr. Barker to accept that amendment.

Mr. BARKER—I propose to speak to the amendment and proceed with my remarks—the Atlantic and Great Western railroad, which was built mainly by capitalists of Europe and gentlemen who are largely interested in the New York and Erie railroad, desire to have a combination, which I have mentioned, completed, as I understand. That road, the Atlantic and Great Western which has its track already extending into Central Ohio, a wide gauge extending to the Mississippi, is in the hands of a receiver, and the day is not very far distant when the interest of the New York and Erie railroad, the stockholders of the Atlantic and Great Western railroad will demand this consolidation; and I tell gentlemen from Albany that their private interests will not be injured by this consolidation, and if this Convention shall adhere to its purpose not to allow consolidation in the mode and manner which I have suggested, there will be a storm raised against sustaining this local feeling. It does not lie in the central part of this State to combine against the West in developing their resources. My neighbors have subscribed within the last thirty days \$500,000 to build a small road connecting with the New York and Erie, and the friends of that road are encouraging and sustaining it, and the day is not far distant when they will demand that consolidation shall take place. I have put my sum of five millions below the capital stock either of the Hudson River or Harlem, and so I beg the gentlemen that live

around the capital to repose in peace, because if my amendment is adopted it will continue to prevent its consolidation in the interest of which the amendment was introduced.

Mr. PAIGE—The object of the amendment offered by the gentleman from Chautauqua [Mr. Barker], I think, can be accomplished under the existing law by the trunk lines taking a lease of these smaller roads, and it therefore requires no provision in relation to consolidation to be inserted in this article.

Mr. RATHBUN—I am opposed to the amendment of the gentleman from Chautauqua [Mr. Barker] upon a good many grounds. I shall have time to state but a few. I am opposed to it because it totally disregards the rights and interests of the stockholders in all the roads incorporated in the State of New York leading in the direction of the West. I propose that the representatives having the control and management of railroads in the State of New York, without regard to the rights or interests of the stockholders, and without regard to the rights or interests of the people of the State, shall not extend by consolidation the arms of railroad corporations in the State, not only into Pennsylvania and Ohio, but through Ohio, Illinois, and through Illinois to the Mississippi and onward to the westward until they reach the Pacific. Now, sir, it is a magnificent scheme, and yet my friend from Chautauqua, who is a good deal of a democrat generally, has made the grand mistake of endeavoring not only to surrender up the capital stock of these companies incorporated in this State, but to allow the corporate authorities to go out and carry that stock and combine it and consolidate it with the stock of other companies in other States, which is inferior, and perhaps worthless, and thus sacrifice or endanger the whole capital stock of companies over which they have charge. I am opposed to it upon that ground and upon the ground which I stated the other day, that we have consolidation enough in this State. We have felt, and we shall continue to feel, the power of the Central railroad as already consolidated, and I am opposed to extending it. It is a matter of history that the Legislature of the State have no power over that road. No law can be passed which will interfere with the interests or with what they claim to be their rights. You cannot regulate or control the transportation of freight; you cannot compel that road by legislation to carry freight for the people of the State on the same terms, nor anything like the same terms that they do and will do for the people beyond the State lines. They have at times charged for freight from the village of Canandaigua to the city of New York the same price that they charged for carrying the same freight from one hundred miles west of Detroit. The Legislature have no power or control over this matter, and if they offer to take up the subject of equalizing or regulating the transportation of freight, in a moment the thing is swept away and forgotten; the people may come here and complain, but it is in vain. The Legislature is impotent before the power of that body. And yet the gentleman's proposition is to make that chain which binds us extend to the Pacific by consoli-

dation and not by mere combination. I am opposed to it.

Mr. A. J. PARKER—I hope that my friend from Chautauqua will calm his mind upon this subject, and rest easy with regard to the little road he tells of, that runs to Erie—he shall not be disturbed in that. He does not need to make charges against me because I happen unfortunately to reside in the capital, and he surely is not authorized to say that I represent any local interests in the course I have taken upon this subject. I have disclaimed it, and he knows it, and he should not repeat it here. Let me say to that gentleman he may repose in peace; he may have a full night's rest at the very first opportunity. There is nothing in the law that will be passed, and surely nothing in any restraint interposed by my amendment, that will deprive the Legislature from giving to that gentleman or his little road the right to consolidate. There is no necessity for his amendment in my judgment. A large limit has been named—twenty millions—which ought to satisfy all, and within that limit there is no legislative restriction. I trust this amendment may be voted down, and put an end to this discussion, and dispose of it.

Mr. E. BROOKS—I hope the amendment now pending will be adopted, and, if the remark of the gentleman who has just taken his seat be true, that the amendment pending does not affect the principle involved in the amendment offered by the gentleman from Albany [Mr. A. J. Parker], there is no reason why the amendment should not be adopted. Sir, a great deal has been said about monopolies. Monopolies are very often the life of trade; they are often the life of commerce; they are its sinews, its power, and its success; and, as a delegate residing on the seaboard, with constituents largely interested in the commerce of the State, I regretted exceedingly that the amendment of the gentleman from Albany [Mr. A. J. Parker] was adopted, as I also regretted to hear the gentleman who moved that amendment express an unwillingness to have the amendment now pending adopted by the Convention. The capital stock of the New York and Erie railroad is over \$25,000,000, and under his amendment it is impossible to consolidate the road which has been named by the gentleman from Chautauqua [Mr. Barker], even with a capital of five or six millions. It was said yesterday by my colleague from Richmond [Mr. Curtis], and indorsed by other gentlemen of the Convention, that we should beware of monopolies in consequence of the great powers they have exercised in the old world, and my colleague made direct reference to the government of France. Sir, let me tell him and this Convention that the railroad system in the government of France, as in the government of Great Britain, has done more to meliorate the condition of the people, and of poor people especially, than almost any one thing done in either of those two governments. I know something of the railroad systems of France; there are two hundred and thirty-three millions sterling of capital invested in the railroads of that country, and the effect has been, not only to advance greatly the price of labor, but very largely to decrease the price of all that has been consumed by the

people of that country. And under that railway system, large as the debt of France is—and it amounts to nearly five hundred millions sterling—it will be paid off within the next ninety-nine years. The great debt of France under the system of sinking funds or *amortissement*, by which three hundred thousand pounds a year is set apart to pay the principal of this £233,000,000 of railroad debt, will be paid off, within a century, and all other debts besides. A similar system is adopted in the Belgian government, where, since 1834, thirteen hundred and fifty miles of railroad have been constructed, and at an expense of some eight millions of pounds sterling, and the entire principal will be paid off under this system of sinking fund, by 1872. These systems have entirely changed and revolutionized the people of Belgium, both in their manufactures and agriculture. Sir, there is no good reason in the world against this cry monopoly. Consolidation, in our case, looks mainly to the principle of self-defense and self-interest. How, as has been said on this floor are you to compete with cities like Philadelphia and Baltimore, all encouraging systems of consolidation, and endeavoring in every way in their power to rival the Empire State in its commerce by precisely such work in their interest if we refuse to take advantage of our own interests. Any gentleman who knows anything of the commerce of the great West knows that railroads are made and building in Kentucky, Tennessee and Virginia, under acts of consolidation, that connect the Ohio river with the James river, with Norfolk and with Richmond. The distance between the Ohio river and Atlantic ocean is nearly one hundred miles less than from the West, by our own lakes to the ocean bordering on our own State.

Mr. BARKER—I accept the amendment of Mr. Prosser.

Mr. ROBERTSON—This cry against monopoly, so long continued and so senseless, which has fallen upon dull and sullen ears for upward of thirty years, I apprehend has no terrors now. It is a scarecrow which has long since been pulled to pieces. The cry of monopoly has been the cry of the dull and inert against the active and energetic. It is always the cry against the larger capital and the greater knowledge which has acquired it, by the dull and sluggish, and a cry to pull down and reduce to a common level the whole community. There is no greater monopoly than the canals of this State. I apprehend if capital could be collected together for the purpose of running a canal alongside of the present canal or through more chosen grounds to connect between Albany and Lake Erie, we should have the cry of all those alongside these canals, and all those who have been in favor of this resolution to prevent the consolidation of capital and canals upon that line; we should have from all those canals an enormous cry, and the armor of battle would be put on to defeat any competition of that kind. Then, why not permit capital to have its full swing in regard to railroads. I have for the purpose of testing the sincerity of arguments of gentlemen in regard to the danger arising from the accumulation of capital in the hands of one person, and to separate

that argument from that which arises from dangers peculiar to railway corporations, of all corporations in the world, drawn an amendment, which I will now submit. It is for the purpose of ascertaining whether twenty millions of dollars in the hands of a consolidated railroad is the only danger to be apprehended from aggregated capital, or whether the same amount in the hands of other persons pursuing their own interests is not equally to be apprehended.

The SECRETARY proceeded to read the amendment, as follows:

Amend the first section by adding thereto the following:

"And no corporation shall be created whose capital shall exceed twenty millions of dollars; and any excess of property beyond that sum, organized by any corporation, not distributed among its stockholders in one year after its organization, shall be applied toward the payment of the debt of the State, under laws to be enacted for that purpose."

The question was put on the amendment of Mr. Robertson, and it was declared lost.

Mr. VAN CAMPEN—I offer the following amendment:

The SECRETARY proceeded to read the amendment, as follows:

Amend the first section as reported by the Committee of the Whole by striking out all after the word "Legislature" and inserting in lieu thereof the following:

"Of parallel or competing lines, or any but continuous lines; nor shall consolidation of any corporation be authorized except by general laws."

Mr. VAN CAMPEN—The argument in favor of the proposition of the gentleman from Albany [Mr. A. J. Parker] amounts to just this: it is a jealousy of the influence of the corporations of this State, that by the aggregation of capital a power is acquired by which they fear the Legislature of the State of New York will be perpetually trammelled, perpetually shackled. That is the sum of the whole argument. Standing upon the sea-board, with our arms stretched out to the fertile West, just beginning to develop and just beginning to send its immense commerce to the sea-port of New York, we deny to the capital of the State of New York the exercise of those privileges which by nature it is entitled to. I ask any gentleman here who has a practical knowledge of business, and who will apply that practical knowledge, if he will stand up here in his place and insert a clause in our Constitution that shall deny us the right to adopt the best system of railroad management that can be had, a system which becomes necessary to meet the great wants of the country. I ask if the mind of this Convention is not sufficiently comprehensive to comprehend the great wants of this country? Shall we shackle ourselves by saying that because we have accumulated twenty millions of capital we shall not add a dollar beyond that to our own advantage? Will we say that on this floor? That is the sum of our action if we adopt that amendment. I ask if we shall not emasculate ourselves by adopting the proposition of the gentleman from Albany [Mr. A. J. Parker]? Preserve to the State of

New York the proud privilege which she has by bringing the commerce of the West to our ports by the best possible means.

Mr. EVARTS—I sincerely hope the amendment of the gentleman from Cattaraugus [Mr. Van Campen] will prevail. And I have no doubt, from the sentiments as evinced by this Convention, that it will. I do not wonder that so much alarm has been felt by those experienced in legislative matters at the tendency to local legislation, when this Convention itself has fallen a victim to that disease. I am quite unwilling to bear any concurring part in the deliberations and final conclusions that shall attempt to legislate for the future in this matter of the development of this State. The Convention may be sure that whatever limits they may think they can impose to guard against the particular evil in their view, they cannot embrace nor control the laws of trade. If the assembled wisdom of the State of New York (made up very much, it seems to me, of that part which runs through the central line), determines that the city of New York shall not establish its commercial relations according to the laws of trade through the State of New York, it will establish them through some other State. The sea-port of the city of New York cannot be dis severed from the great valley of the Mississippi by the local legislation of the central part of the State. I would rather by far see even this blot and blemish in the Constitution, and upon ourselves, as its framers, in a definite provision that the Harlem and Hudson River roads shall not consolidate with the Central, for then you can fix and measure the effect of our legislation. And then we can build another road from the city of New York through the State of New York to the West. Let us have it fair and square, and not be told by our friend from Albany [Mr. A. J. Parker], after this monopoly, the Central railroad consolidation is secured as forever, the only one that can take place, and after this interest of localities is preserved, that he hopes there will be no more debate, and no more discussion, no more consideration, but an immediate and final vote.

Mr. BARKER—Two propositions have been presented by the advocates of prohibition. The first is against the aggregation of capital. We have not by the same section prohibited it, for by general law capital is allowed to be concentrated for any purpose, and for a business to be carried on in any place in this State. It may be to the amount of one hundred millions of capital, for importation in this country that will control all the products that may be brought to America for sale upon an open market; yet in this very section they allow a company to be incorporated for that purpose. Another proposition is that this combined capital tends to corrupt legislation and corrupt the people. I submit to them whether that is proved in the history of legislation and of political influence for the last ten years as carried on by a corporation that extends from the place where we now stand to the city of Buffalo. I say you cannot aggregate capital to such an amount that it will exercise an influence equal to that which has been carried on in this State for the last ten years. I ask gentlemen how much it

will add to the influence of the New York and Erie railroad company to allow it to combine and consolidate with a corporation that runs from Dunkirk to Chicago, or from Salamanca to Columbus, Cincinnati and St. Louis. I beg them to bear in mind another thing, that the point where the great railroads of this State concenter, is only across a stream one hundred yards wide where they can get into another distinct jurisdiction, and can get legislation that will carry on the trade of this country. They cannot, as my eloquent and earnest friend from New York [Mr. Evarts] has said, they cannot dam it up; the Hudson river is not wide enough at Albany to hinder it.

Mr. CURTIS—It seems to me that my honorable friends from New York [Mr. Evarts] and from Chautauqua [Mr. Barker] merely repeat the error which was conclusively exposed yesterday by the honorable gentleman from Schenectady [Mr. Paige]. There is no interference with the laws of trade proposed by this amendment. As I said yesterday, the honorable gentleman from Westchester [Mr. Greeley] may to-day go with luggage checked through from one end of this country to the other, and it is so with commercial transport. All that can be achieved by consolidation is now accomplished by combination. I suppose no one objects to a thousand different corporations in this State, each with its necessary rivals, with the necessary friction of competition, each controlling the other according to the laws of trade and of human nature. But shall those thousand corporations be consolidated into one vast corporation? That is the substance of this question. Gentlemen who speak so lightly of monopolies should understand that the danger of our civilization is the towering tyranny of capital. The whole question of the future is necessarily a question of capital. Why, when you have added thousands and thousands of miles more of railway transportation in this State to those that already exist, then, if you permit consolidation, not more surely will the soil of this State be bound down by iron rails than will its political and industrial interests be absolutely subordinated to the will of that great corporation. Then the people of the State of New York will find that they have created a tyrant; then, when it will be too late, they will lament their choice. Mr. President, those of us who support the amendment of the gentleman from Albany [Mr. A. J. Parker] are not to be forced into a position of seeming hostility to the prosperity of this State. We would allow the laws of trade free play; but we are sure that the people everywhere wish to guard against those dangers which experience has shown to be the most threatening. All that is sought in consolidation may be gained by a system of combination.

Mr. KERNAN—It is very unjust in the gentleman from New York [Mr. Evarts] to assume that in the central parts of this State, or anywhere else in this State, there is any hostility to the prosperity and commercial greatness of the city of New York. I assure him that those who vote for this amendment do it in no spirit of hostility to that city; but, really believing that it is not only consistent with and conducive to its prosperity and greatness, but for the benefit of

the State that there should be a provision that large corporations should not be allowed to come to the Legislature and obtain special acts for consolidation. They believe, mistakenly or not, that the prosperity and greatness of that city depend upon its having free and cheap intercourse by competing lines with the entire State and the West. And they do not believe that it will tend to the prosperity of the city or the welfare of this State to allow speculators and stockjobbers when roads have been formed, one of which may be a prosperous and another a weak line, to allow them to get control of a majority of the stock, consolidate the two roads by an arrangement by which they make large sums, while they wrong and defraud the small stockholders. This has been done again and again in the State of New York. The consolidation was not for the benefit of the city of New York, not for the benefit of trade, not for the benefit of commerce, not for the benefit of the State, but to enable a few large capitalists and stockholders to make great wealth at the expense of the minority of the stockholders of those roads. Our Constitution will allow men to form a railroad corporation to reach any where in the State as one line. And when that is done the general law regulates, determines and protects the rights of each stockholder in it. But if certain parties can get control of a majority of the stock of two corporations, and then get a special act passed the minority stockholders have no rights at all, they are at the mercy of the controlling interest, they are not heard as to that consolidation. Now it seems to me there is no danger to the city of New York, and that her true interest is that these great railroad lines shall be controlled by separate boards of directors coming into competition, and not all consolidated so they will be able to say no products shall come from the West at all, unless they come at such freights as they see fit to establish. Such a consolidated company would be so strong that no other competing road will ever be established. We may be mistaken; but I assure gentlemen that members who vote for this amendment do so with as much pride in, and with as strong a desire that New York city should be great and prosperous as can be entertained by any one, because her prosperity is the prosperity of the State when properly considered.

Mr. DALY—The gentleman from Richmond [Mr. Curtis] tells us that all that can be achieved by consolidation is achieved by combination. If that is so, then what necessity is there for inserting this provision in the Constitution? The gentleman gives as a reason, that it would create a tyrant in the State that would control the Legislature in all matters relating to the pecuniary interests of the consolidated corporation, and fix the future political policy of the State. I adverted yesterday, Mr. President, to the fact of the past consolidation of the Central road, and to the extent of its political influence; to the fact that although said to be used as a political machine in the interest of the democratic party there had not been from the time of the last Constitution to the present periods but one democratic Governor elected. I admitted the fact, and I admit it now, that a body so organized would influence the

Legislature; but that body would be influenced as much by corporations combined as by corporations consolidated. Why are we, of the city of New York, representing the interest of the State, so far as it is concentrated at the commercial center, in favor of consolidation instead of combination? For this reason, sir, that a road conducted under one general management, if not otherwise objectionable, would be conducted more economically, systematically and more to the advantage of the public, than connecting roads can be under separate management. What has been the result in the case of the Central road? Consolidation took place, and that consolidation was beneficial to the State, and especially beneficial to the city of New York. What is the objection to consolidation now? The same objection that might have been urged then—political influence. The influence of the corporation would, in the language of the gentleman from Richmond [Mr. Curtis], be the most intolerable of tyrannies. But, Mr. President, he is not as old as the gentleman from Ontario [Mr. Lapham], and myself, who remember the great battle that was fought in this country against the most gigantic corporation that ever existed in it, or that ever attempted to wield its power against the popular influence of the people. The gentleman from Ontario and myself were among the active soldiers of the army that shattered that corporation to pieces. That was the result of the attempt then to use a great corporation as a political power, and to assert that in this age, that in this country, and that in this Republic, any corporation can by the influence of money, obtain any permanent control over the American people is to controvert their past history and affix an unmerited reproach upon the national character. I have already shown that so far as regards the Central road it never controlled this State, and as respects the future no consolidation of roads can control it. If you deny the right to consolidate, the practical effect may be this, that capital will find its own level as water does and if obstructed in its course it may be diverted in another direction. It will, as industry does, as trade and commerce does, work out its own channels, and by the same natural laws. If gentlemen of the central portion of the State through which the Central road now passes persist in this prohibition, the effect may be that they will have the principle of consolidation applied to the Erie road in connection with the great web of roads that are hereafter to exist as the main thoroughfares between New York and San Francisco or with competing roads to the prejudice of the central part of the State. It is perhaps after all not so much a matter of special interest to us in New York, because we are interested mainly in the free competition of continuous routes leading to our great center. We think that the consolidation of the Central or Hudson River or any through road communicating and forming a part of the belt of roads, would be better managed, would be more economical, and that it will further the general interests of trade to have a unification of lines both of railroads or telegraphs, from the waters of the Atlantic to the Pacific.

Mr. GREELEY—It seems very clear, Mr. President, that the principle asserted in these restrictive amendments has been very imperfectly and inconsistently carried out by this Convention. If the principle which we seem to have adopted be sound, then it ought to have a much wider application than the amendment of the gentleman from Albany [Mr. A. J. Parker] proposes. For instance: if it be wrong, injurious and dangerous to have one line of railroad from New York to the western line of Chautauqua county, by the east side of the Hudson river, then, obviously, it would be equally wrong, equally dangerous, equally a peril to the people, to have another line running up the west side of the Hudson, and thence extending across the State to Pennsylvania. Most clearly, there is no difference in principle, nor in fact, between a consolidation of those lines which start from New York on the east side of the river and the creation of a new line which shall start on the west side; and yet gentlemen do not condemn nor propose to forbid the latter. I urge that they should be consistent, and prohibit new lines of more than a certain length, if they prohibit the consolidation of lines that already exist. People are building, in our day, very large machine-shops, very large workshops for the manufacture of steam-engines, and large manufactories, some of them covering two or three acres of ground. Why do they do it? Because a certain economy is thereby realized; they can thus make cloths a mill a yard cheaper than they could if they worked in little factories, with small capitals, and few hands. Now, according to the logic of the gentleman from Richmond on my left [Mr. Curtis], all these vast, overshadowing corporations are perilous, and they ought to be forbidden in the Constitution which we are here to make, every one of them. I find that there is economy in long lines of railroad. Although, as the gentleman says, I may check my baggage for quite a long distance from New York, I find many difficulties and annoyances in these short roads. For instance: I once brought a lot of trees from Rochester: they came to Albany; here they stopped in a warehouse three or four weeks, till they were nearly dead, because there was the Massachusetts Western railroad between me and the Harlem, on which I live. There was a loss to me which would not have occurred if there had been one railroad from New York to Buffalo. Now, I speak of this and other little annoyances of mine because they illustrate a general law. What are my inconveniences and my losses by these petty links of road, are the public's inconveniences and the public's losses. I pray this Convention, on behalf of the public, to consider the interest of the public. They are interested in cheap travel, cheap transportation, continuous lines of travel and transportation; and with regard to those saving devices, which, after all, are the distinguishing features of our age—this reaching after grand economies—I predict that their instinct will ultimately and practically overbear all these vague apprehensions of shadowy and unreal peril.

Mr. DUGANNE—It is an unfair as well as a sophistical argument brought before this Convention, to compare these railroad corporations with

the general business of the country. It is an unfair assumption and a sophistical one, to say that because we declare that railroads should not be consolidated we ought also to declare that capital shall not be invested in the great industrial productions of the country to a very large extent. Sir, the machine shop, with its immense resources, does not monopolize the business of machine-making. It has competitors arising on every side. But who shall compete with a railroad that not only traverses this State, but belts it from one extremity to the other. I can recognize the great utility in the future of a line of railroads which shall connect all parts of the great West with our sea-board. But I also hope and live in hope that there shall be a great canal system which will extend from the Mississippi to the Atlantic, and which will be a successful competitor to those railroads. But, sir, I can imagine the time when a great consolidated railroad corporation, extending from the Mississippi to the Atlantic, might, by the aid of enormous capital, compete so disastrously, so ruinously with the canals, and be so capable of overshadowing and monopolizing their business, that they would eventually be able to purchase the canals from East to West, and so prevent the people from profiting by the usefulness of those great water highways; and in that event, I fear, the vast prosperity of New York city would be decreased instead of increased, through the enhanced prices of freight imposed by a monopolizing railroad corporation. Sir, the prosperity of New York depends upon the prosperity of all its people, not its merchants alone, not its moneyed men, not its banking system or railroad corporations, but upon the prosperity of the working people, the producing millions of the State and its metropolis.

"Ill fares the land, to hastening ills a prey,
Where wealth accumulates and men decay."

I speak, sir, for the individual workers and industrial interests of this country, as opposed to all overpowering and overriding monopolies, especially those of the railroad kind, which admit of no competition because of their enormous financial resources.

Mr. LAPHAM—My honorable friend from New York [Mr. Daly] says that in that contest to which he referred, the people were strong enough to put down the corporation known as the United States Bank. So the people have since proved strong enough to put down a gigantic rebellion, a blow aimed at the nation's life. I ask my honorable friend if he desires to invite another trial of either of these ordeals—a contest with gigantic moneyed corporations, or a contest with another rebellion. Sir, it is a homely maxim that an ounce of prevention is worth a pound of cure. It is the preventive feature of this amendment of the gentleman from Albany [Mr. A. J. Parker] that gives it its chief and great value.

Mr. AXTELL—In regard to a remark which fell from the gentleman from Chautauqua [Mr. Barker]. I do not know with what propriety he charges the majority of this Convention with being actuated by local considerations or local feelings in sustaining the amendment of the gentleman from Albany. I move the previous question on this section.

The question was put on ordering the previous question, and it was declared carried.

The question was then put on the amendment of Mr. Van Campen.

Mr. SCHELL—I ask the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The SECRETARY proceeded to call the roll.

The name of Mr. Cassidy was called.

Mr. CASSIDY—I ask to be excused from voting. I have paired off with Mr. Corning.

No objection being made, Mr. Cassidy was excused.

The SECRETARY completed the call of the roll, and the amendment was declared lost by the following vote:

Ayes—Messrs. Andrews, Archer, Baker, Barker, Beadle, Beals, Beckwith, Bell, Bergen, Bickford, E. Brooks, E. P. Brooks, E. A. Brown, Carpenter, Chesebro, Church, Comstock, Conger, Daly, Endress, Ferry, Fullerton, Garvin, Greeley, Gross, Hale, Hitchcock, Hitchman, Jarvis, Kinney, Krum, Larremore, M. H. Lawrence, Loew, Merrill, Merwin, Monell, Pierrepont, President, Robertson, Rogers, L. W. Russell, Schell, Seaver, Silvester, Sheldon, Sherman, Stratton, Strong, Tilden, S. Townsend, Van Campen, Weed, Wickham, Young—55.

Noes—Messrs. C. L. Allen, Alvord, Armstrong, Axtell, Ballard, Barto, Bowen, Champlain, Clinton, Cooke, Corbett, Curtis, Duganne, Eddy, Ely, Field, Folger, Fowler, Francis, Fuller, Goodrich, Gould, Graves, Hadley, Hammond, Hand, Hardenburgh, Hatch, Harris, Hatch, Hiscock, Houston, Kernan, Lapham, A. Lawrence, Lee, Ludington, Magee, Mattice, More, Opdyke, Paige, A. J. Parker, O. E. Parker, Pond, Prindle, Rathbun, Reynolds, Root, Roy, Rumsey, A. D. Russell, Schoonmaker, Seymour, Smith, Van Cott, Verplanck, Wakeman, Wales, Williams—59.

The question recurred on the amendment of Mr. Barker.

Mr. BARKER—I ask that the question may be divided.

Mr. ROBERTSON—If it is in order I will give notice of a reconsideration of this last vote.

Mr. ALVORD—I rise to a point of order. This matter having once been reconsidered cannot be again reconsidered.

The PRESIDENT—The Chair rules this amendment has not been reconsidered, the general proposition has been reconsidered, but not the amendment.

The motion to reconsider was laid on the table under the rule.

The SECRETARY proceeded to read the first proposition of the amendment of Mr. Barker, as follows:

Provided, The effect of this prohibition does not prevent consolidation between companies when the capital stock thereof does not exceed six millions of dollars.

The question was put on the first proposition, and, on a division, was declared lost by a vote of 49 to 54.

The question was put on the second proposition, which the SECRETARY proceeded to read, as follows:

Provided, This prohibition does not prevent con-

solidation where one of the companies is incorporated under the laws of another State or States.

Mr. BARKER—I demand the ayes and noes on the balance of the proposition.

A sufficient number seconding the call, the ayes and noes were ordered.

The SECRETARY proceeded to call the roll, and the amendment was declared lost by the following vote.

Ayes—Messrs. Andrews, Archer, Barker, Beadle, Beals, Bell, Bergen, Bickford, E. Brooks, E. P. Brooks, E. A. Brown, Chesebro, Comstock, Endress, Ferry, Fullerton, Garvin, Greeley, Gross, Hale, Hitchcock, Hitchman, Jarvis, Krum, M. H. Lawrence, Loew, Merrill, Merwin, Monell, Pierrepont, President, Robertson, Rogers, L. W. Russell, Schell, Seaver, Silvester, Sheldon, Stratton, Strong, Tilden, S. Townsend, Van Campen, Weed, Wickham, Young—46.

Noes—Messrs. C. L. Allen, Alvord, Armstrong, Axtell, Baker, Ballard, Barto, Beckwith, Bowen, Carpenter, Champlain, Clinton, Conger, Cooke, Corbett, Curtis, Duganne, Eddy, Ely, Field, Folger, Fowler, Francis, Fuller, Goodrich, Gould, Graves, Hadley, Hammond, Hand, Hardenburgh, Hatch, Hiscock, Houston, Kernan, Kinney, Lapham, Larremore, A. Lawrence, Lee, Ludington, Magee, Mattice, More, Opdyke, Paige, A. J. Parker, C. E. Parker, Pond, Prindle, Rathbun, Reynolds, Root, Roy, Rumsey, A. D. Russell, Schoonmaker, Sherman, Smith, Van Cott, Verplanck, Wakeman, Wales, Williams—64.

The question recurred on the adoption of the section as reported by the Committee of the Whole.

Mr. BARKER—I move to reconsider the two last votes.

The motion was laid on the table.

Mr. SHERMAN—I ask a division of the question on the remaining amendments in Committee of the Whole to this section, so a separate vote can be had on the amendment of Mr. Burrill, which strikes out the words "except for municipal purposes," and insert at the end of the section these words, "this section shall not apply to municipal corporations."

Mr. BARKER—I ask a reconsideration of the first vote taken this morning.

The motion was laid on the table.

Mr. BALLARD—I wish to ask whether the amendment of the gentleman from New York [Mr. Burrill], "that this article shall not apply to municipal corporations," if that is voted down does it restore the language in the original section, "except for municipal purposes?"

The PRESIDENT—The Chair is unable to say, not having the text before him.

Mr. RUMSEY—I desire to inquire whether what the gentleman from Oneida [Mr. Sherman] proposes to restore is the language of the Constitution of 1846.

Mr. SHERMAN—It is.

The question was put on the proposition of Mr. Sherman, and was declared lost, on a division, by a vote of 26 to 52.

The question was then put on the section as amended, and it was declared carried.

The question then recurred on the second section.

Mr. MERRILL—Having tied up our Sampson with green withs and cut off his hair in the first section, I move the previous question on the second section.

The question was put on the motion of Mr. Merrill, and it was declared lost.

Mr. PAIGE—I move the following as an additional section:

The SECRETARY proceeded to read the additional section as follows:

The Legislature shall pass laws providing a scheme or plan which will, so far as is practicable, secure an equal representation to all the stock or shareholders of stock corporations, in respect to the number of shares of stock owned by them, and a direct personal representation to each of the said stock or shareholders in the board of directors, trustees, or managers of their respective corporations.

Mr. PAIGE—On this I demand the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was put on the amendment of Mr. Paige, and it was declared lost by the following vote:

Ayes—Messrs. Beckwith, E. Brooks, E. P. Brooks, E. A. Brown, Cassidy, Champlain, Church, Comstock, Cooke, Corbett, Curtis, Ely, Field, Francis, Fuller, Gould, Greeley, Hale, Hand, Kernan, Landon, Merwin, Morris, Paige, A. J. Parker, Reynolds, Roy, L. W. Russell, Stratton, S. Townsend, Wakeman, Young—32.

Noes—Messrs. Alvord, Archer, Axtell, Ballard, Barker, Beadle, Beals, Bell, Bergen, Bickford, Bowen, Carpenter, Chesebro, Clinton, Conger, Eddy, Endress, Everts, Ferry, Folger, Fullerton, Garvin, Gerry, Goodrich, Graves, Hadley, Hammond, Harris, Hitchcock, Hitchman, Houston, Jarvis, Kinney, Krum, Lapham, Larremore, A. Lawrence, M. H. Lawrence, Lee, Loew, Ludington, Magee, Mattice, Merrill, Monell, More, Opdyke, C. E. Parker, Pierrepont, Pond, President, Prindle, Prosser, Rathbun, Robertson, Rogers, Root, Rumsey, A. D. Russell, Schell, Schoonmaker, Seaver, Silvester, Sheldon, Sherman, Strong, Tilden, Van Cott, Wales, Wickham, Williams—72.

Mr. COMSTOCK—I ask leave to have my name recorded in the affirmative upon the vote taken this morning, to strike out the amendment of the gentleman from Albany [Mr. A. J. Parker].

Mr. ALVORD—It seems to me the ordinary parliamentary rule is to have the request entered on the Journal.

The PRESIDENT—The Chair so understands the rule. The request will be so entered.

Mr. OPDYKE—I desire to renew the motion in Convention that I made in committee to strike out the fourth section. I will say, in addition to what I then said, that it seems to me derogatory to the character of the State to have in its fundamental law, or in the statute book, a provision which is entirely disregarded; but especially as in this case when that disregard is grounded upon the preservation of the public good. I stated yesterday that at the time the banks suspended in 1857, they would have been forced into liquidation, and we should have been deprived of a circulating medium, but for the interposition of the

courts. The gentleman from Oneida [Mr. Kernan] denied that the courts took any such action. He seems to be strangely oblivious on the subject. It is well known that the courts of the city of New York (and I suppose throughout the State), in a concert of action, refused to entertain the suits of malicious persons against the banks which were designed to put them in liquidation. That would have been the result—we should have been deprived of a circulating medium. Consequently every debtor in the State would have become bankrupt. I do hope this Convention will expunge this provision from the Constitution. I should like the ayes and noes upon it.

Mr. GREELEY—I call the previous question on the whole article.

The question was put on the motion of Mr. Greeley, and was declared carried, on a division, by the vote of 51 to 30.

Mr. OPDYKE called for the ayes and noes on his motion.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was put, on the motion of Mr. Opdyke, and it was declared lost by the following vote:

Ayes—Messrs. Alvord, Baker, Beals, Bickford, Clinton, Cooke, Curtis, Field, Francis, Gould, Graves, Hand, Jarvis, Kinney, A. Lawrence, Opdyke, A. D. Russell, Silvester, Sheldon, Stratton, Van Cott, Wales—22.

Noes—Messrs. Archer, Armstrong, Axtell, Ballard, Barker, Barto, Beadle, Beckwith, Bell, Bergen, Bowen, E. Brooks, E. A. Brown, Carpenter, Cassidy, Champlain, Chesebro, Church, Conger, Corbett, Eddy, Ely, Endress, Everts, Ferry, Folger, Fowler, Fuller, Fullerton, Garvin, Gerry, Goodrich, Greeley, Gross, Hadley, Hale, Hammond, Hardenburgh, Hatch, Hitchcock, Hitchman, Houston, Hutchins, Kernan, Krum, Landon, Lapham, Larremore, M. H. Lawrence, Lee, Livingston, Loew, Ludington, Magee, Mattice, Merrill, Merwin, Monell, More, Morris, Paige, C. E. Parker, Pierrepont, Pond, President, Prindle, Prosser, Rathbun, Reynolds, Robertson, Rogers, Root, Roy, Rumsey, L. W. Russell, Schell, Schoonmaker, Seaver, Sherman, Smith, Strong, Tilden, S. Townsend, Van Campen, Verplanck, Wakeman, Wickham, Williams, Young—90.

The question was then put on the adoption of the article as amended, and was declared carried, and it was referred to the Committee on Revision.

Mr. SILVESTER—I move to reconsider the vote by which the first article was adopted.

The PRESIDENT—The Chair would inform the gentleman that a motion to reconsider already lies upon the table.

The PRESIDENT presented a communication from the Commissioners of the Land Office in reply to a resolution of the Convention adopted on the 8th day of August in relation to lands acquired by the Sackett's Harbor and Saratoga railroad company; which was referred to the Committee of the Whole and ordered to be printed.

Mr. FOLGER—I offer a resolution which I ask may lie upon the table.

The SECRETARY read the resolution as follows:

Resolved, That the Standing Committee on Revi-

sion is hereby instructed to add to the first section of article 8, as adopted by the Convention, the following:

"Unless the act therefore shall have been submitted to the people at the general election next after the passage thereof by the Legislature, and shall have received the approval of a majority of all the electors voting at such election."

The Convention then resolved itself into Committee of the Whole on the report of the Committee on the Governor and Lieutenant-Governor, etc.; Mr. KERNAN, of Oneida, in the chair.

The CHAIRMAN stated the question to be on the adoption of the eighth section.

The SECRETARY proceeded to read the section as follows:

SEC. 8. Every bill which shall have passed the Senate and Assembly, shall, before it becomes a law, be presented to the Governor. If he approves of the bill he shall sign it. But if he disapprove of it, or of any part or parts of it, containing separate and distinct provisions, he shall return it to that house in which the bill shall have originated, with his objections to the whole or such part or parts of it as he shall disapprove, which shall enter the objections at large in their Journal, and proceed to reconsider it. If, after such reconsideration, either of an entire bill, or of a part or parts of said bill objected to, as the case may be, two-thirds of all the members elected to that house shall agree to pass the whole bill, it shall be sent, together with the objections, to the other house, by which it shall be reconsidered, and if approved by two-thirds of all the members elected to that house, it shall become a law, notwithstanding the objections of the Governor. If either of the two houses shall not thus approve of the part or parts objected to, the bill containing such part or parts as shall be approved by the Governor, shall without unnecessary delay after the vote is taken on such reconsideration be engrossed as a separate bill, and returned to the Governor for his signature. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the Journal of each house respectively. If any bill shall not have been returned by the Governor in ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature shall by their adjournment prevent its return, in which case it shall not be a law. The right of the Governor to sign bills shall cease with the adjournment of the Legislature.

Mr. C. L. ALLEN—Mr. Chairman, in the remarks I had the honor to submit when this question was under consideration last before the Committee of the Whole, I had substantially stated the reasons that operated upon the minds of the committee in reporting the several sections comprising this article, with the exception of the one now remaining under consideration, and I was about, at the time the committee rose, to submit some few remarks in relation to this section, and to detail as concisely as I might the reasons for recommending the adoption of it by the Convention. And, before I proceed, sir, I may pause to

make a single remark, and that is, I have learned that, during my absence, which was obtained for me by leave of the Convention in consequence of illness, a motion was made to take this subject from the Committee of the Whole and refer it to another committee of this body. Why that motion was made I am at a loss to determine, nor do I know what was said or the reasons that operated upon the minds of those who favored it, but I have thought it was a little singular that a motion of that kind should be made, especially as the subject of this section appeared to the committee not only to be referred to them by reason of the powers and duties imposed upon them, but more particularly by two resolutions adopted by this Convention, referring to us specific inquiries relating to the veto power, and on both which we reported. One of our reports was unfavorable to the resolution moved, and it was adopted by this body and, of course, that subject was dismissed, that is, the committee moved to be discharged from further consideration of that resolution, and that motion upon the report of the committee was agreed to by this Convention. Thus, not only did we act in conformity with the Convention of 1846 in considering the subject of this eighth section, but we furthermore acted in obedience to the two resolutions of the Convention which had been submitted to us for consideration directing us to inquire into the expediency of these very measures; that is, the one which was voted down by the Convention, and secondly, the one we reported in favor of, with an enlargement of the resolution of the gentleman from Oneida [Mr. T. W. Dwight]. So much then for that subject, sir, but I might add before passing from it, however, that it might be considered as rather an implied censure upon the committee, when they supposed they had been acting directly in accordance with the instructions of the Convention, as well as of the precedent set by them, and by the Convention of 1846. Now, sir, I had made most of the remarks in relation to the importance of retaining this veto power in those I had the honor to submit at the last hearing of this question before this committee, and I shall not deem it my duty to reiterate them again to-day; they are fresh in the recollection of the committee and the minds of the members are probably made up as to this important point, that the veto power should be retained at all events to a certain extent. I did say, sir, that the doings of the Convention of 1846 were a little inconsistent in this, that while the article in that Constitution required a majority of all the members elected to the Legislature to pass a bill, yet the same section enables a vote of less than a majority, namely, a vote of two-thirds of those present, to override the Governor's veto, and to extinguish his objections to any bill submitted to him for consideration, when it declares that a less number of votes than are required in the first instance to pass a bill may re-enact it over his veto, and thus the great object of this safeguard might be often frustrated and defeated. We have therefore required in the article a vote of two-thirds of all the members elected to each branch to overthrow the Governor's veto. One great objection has

been made, and it engaged the attention of the committee of course, and served to occupy a good deal of time in our deliberations. I allude to the power to veto a part of a bill. We have not submitted this part of it without due reflection, due consideration and due weight being given to the arguments that might be adduced against that part of the report. It authorizes the Governor to approve a certain part of a bill, and disapprove of certain parts containing separate provisions. One of the great objections urged to me on this subject and mentioned in the committee, was, that it was impossible to carry this into effect. Upon reflection we saw no difficulty on that point; the clause has reference to bills containing separate and distinct provisions; that is, a bill containing not only provisions for a certain specific object, but containing other sections embracing another and entirely different object, in fact attempting to incorporate in one bill what would be more properly the subject-matter of two, and the object of which would be to enforce the passage of one because of the necessity for the other; and particularly might this be the case, sir, in the passage of what is generally called the supply bill, which has been not inappropriately denominated a sort of *omnium gatherum* bill, in which everything is inserted, and in which members often have specific clauses included making particular appropriations for independent and improper purposes and objects, which they calculate will be forced through in consequence of the very necessary provisions of other parts of the bill, and which therefore must pass unless the whole bill fail, and hence the Legislature would be induced, as the committee remark in their report, frequently to consent to the passage of measures which never could have received a majority of votes had they been presented in different bills. It was one that operated upon the minds of the committee in presenting this part of the report, and we thought it was one of the most important we could recommend if it could be carried into effect and adopted by the Convention. Another objection was that if we undertook this, it would be impracticable during the last stages of the Legislature in which most bills were passed. That in regard to bills, a portion of which were objected to, there would not be time enough to have them returned to the Legislature and passed, and then sent again to the Governor for his final signature. That, we considered would be obviated by taking this view of it. We supposed that the legislative committee or that branch of it which had the powers of legislation peculiarly confined to them, might obviate this by proposing that no bill should be sent to the Governor within ten days or twenty days of the close of the session of the Legislature. We all know, through the history of legislation in this State, that bills have been multiplied at the last stages of the Legislature so that the last two or three days they have accumulated in masses and piles in so much that many members of the Legislature did not know what they were voting for, and when you inquired of many of them on their return home, "How came you to vote for the provision contained in such a bill?" they would answer, "I declare my attention had not been called to it: it was passed the last days

of the session in the hurry and flurry of business, and my vote was with the rest." Now, we had this very objection in view, and we supposed the fact of putting this in the provision relating to the powers and duties of the Legislature would fully obviate it, and that no bill would be hereafter sent to the Governor for signature less than ten days previous to adjournment. This was another reason why we recommended the last clause of the article by which the power of the Governor to sign bills shall cease with the adjournment of the Legislature. It will be unnecessary for me to multiply remarks on this point. I believe the amendment will recommend itself to the minds of the Convention. It certainly has to the minds of those with whom I have conversed on the subject, and all have concurred in the opinion that the Governor should be restricted in the signing of bills to a time terminating with the session of the Legislature, and that they should not be thrown on his hands in this mass, at the close, he having the whole recess to sign or withhold. In fact one of the gentlemen who held the executive chair with whom I conversed on this subject said it would be a very desirable provision if we could carry it into effect. Now, as I remarked the other day, I was informed, that at the last session of the Legislature at its close there were upward of four hundred and eighty bills filed upon the Governor's table at the adjournment of the Legislature, so that it was physically as well as mentally impossible for him to read one-quarter or one-tenth part of them, and that is the reason urged why he has been constrained to take so much time in considering the bills forced through during the last days of the Legislature. Then to greatly aid him upon that subject, and to relieve him from incessant and protracted importunities, we concluded that it would be required that all bills passed during the session should be presented for signature within a certain number of days of the adjournment, that he might have full opportunity to approve of certain parts of a bill and disapprove of others. Now, sir, I do not intend to dwell upon this subject because my main remarks were submitted the other day and it is unnecessary for me to repeat them. We have said in our report or in the remarks accompanying our report in reference to this measure that:

"It has not unfrequently been the case, that bills proposing to enact wholesome and salutary laws, have also contained provisions of so objectionable a character as to prevent their approval by the Governor, and thus, many measures highly conducive and almost indispensable to the public welfare, have been defeated, or have been preserved only by carrying with them enactments highly odious and offensive. Indeed, it is well known that obnoxious propositions have been artfully inserted in bills, for the purpose of enforcing their enactment under the calculation, not often ill-founded, that honest members of the Legislature would be induced to suffer them to pass into laws, rather than lose the benefit of the unobjectionable features. In other instances they have been introduced during the last stages of legislation, and amid the hurry and confusion and excitement, always prevailing at such a time,

they have been precipitated into laws—when, if they had been proposed in separate bills, they never could have received the sanction of the Legislature.”

Now, sir, I cannot add, it appears to me, to the force of these remarks, but merely recur to them as a part of the report of the committee, and for the present will content myself with that reference.

Mr. ALVORD—I move an amendment to this section.

The SECRETARY proceeded to read the amendment, as follows:

Strike out in fourth line the words “it,” and insert after the first “it,” “any bill for the appropriation or payment of moneys from the State treasury or from the treasury of any county, city, town or village.”

Mr. ALVORD—My idea is this, and I desire to have the committee understand it, that I would confine this veto of parts of bills to the general appropriation and supply bills, and the appropriations for State, village and county purposes which may be brought up before the Legislature, giving the authority and power to the Governor to veto certain distinct propositions, for the appropriation or payment of money, and leaving the others to the Legislature. Now, the difficulty has been suggested by the gentleman from Washington [Mr. C. L. Allen], in his reference to the supply bill, it is an *omnium gatherum*; a great necessity, almost an imperative necessity, exists that the bill in the main should pass; many objectionable features are placed in it, separate and distinct items, amounting in each case probably to but a small sum, but in the aggregate to a large amount, and in the necessity existing for passing a supply bill of some kind or other, the whole thing goes through and the bill is signed by the Governor and becomes a law. So in regard to the appropriation bill; an appropriation bill is a necessity of the government; it has to be passed for the purpose of carrying on the fiscal operations of the government for the succeeding year. It is made up of separate items, there are items put in which are objectionable, but which, from their connection with others, get the requisite vote in the Legislature, and are passed and become together a law, and go before the Governor, and he has got either to reject the entire bill or else take these exceptional matters as well as those which are to the benefit of the State. To that extent I am willing to go with the report of the committee and this article, but beyond that it seems to me it will be treading upon difficulty after difficulty in every bill that shall come up. Sections that shall appear objectionable to the Governor, in examinations he may make in reference to them, may without any great amount of examination be cut out, he supposing they stand as separate and distinct propositions which will not injure the texture of the bill, and they may hurriedly, at the end of the session, or under peculiar circumstances, fail to get a two-thirds vote to sustain them; the result is that under the inflexible rule laid down here, the house is bound to take the bill, if they shall fail to get the two-thirds vote, though

that part of it that he approves may be entirely inoperative with the sections struck out which he objects to. If this is to obtain, it strikes me that the Legislature should have the right at the same time that they refuse to overrule the veto by a two-thirds vote, to repeal what they have done with regard to the balance of it. But that is not all; they are compelled to take his veto, and failing to get two-thirds of the number of members in the Legislature, they then have nothing else to do than to engross the remaining sections of the bill, send it to the Governor for his signature and he signs it. In the case of the supply and appropriation bills there are separate and distinct propositions; in the appropriation bill for instance, there is one sum for the public support of canals, another for the support of government in another direction, and another in another direction; one of those items does not necessarily and entirely include the other. So in the supply bill, one item does not affect all; in the supply bill there are ten thousand items which go in annually, and increase the total up to hundreds of thousands, and sometimes millions. I hope, therefore, and I trust that the amendment or something similar to it, will receive the acceptance of the committee.

Mr. RATHBUN—I would like to ask the gentleman [Mr. Alvord] a question. Suppose the Governor vetoes one of the sections of the supply bill, or one of the articles of an appropriation bill, and the Legislature fails to override the veto of that one, but they say to him, “you have got to take that or you shall not have any.” What then?

Mr. ALVORD—I don’t say that.

Mr. RATHBUN—That will be the result.

Mr. ALVORD—I am not in favor of any such proposition. I merely stated that which would be very objectionable unless they had the right so to do. I doubt if it would then be acceptable to myself. As I suggested to the gentleman on my right, they ought to have the right so to say, otherwise you compel a majority of the Legislature to be subservient to the Governor; he is the affirmative law-maker in the case, because he can cut out such portions as he desires, make it objectionable to the majority, and not objectionable to quite two-thirds; it may be objectionable to 86 out of the 128, but not to 87, consequently they are compelled to take what he has given them, they cannot get away from it, and it will leave it in such a way as I hope this committee will not leave this matter.

Mr. RATHBUN—I do not believe the gentleman is right in that argument. I believe that the veto power ought to be retained as suggested by the gentleman and contained in the provision now under consideration, and the very argument which he uses, is the argument in my judgment which should sustain that provision. He says the supply bill, and he might add I suppose the New York tax bill, embraces items that ought not to be there at all. I suppose it will not be denied that sometimes that occurs. Now, it is conceded that the Governor ought to have the power to veto so much of such a bill

as is unjust and approve the balance. If you give to the Legislature the power after the veto of the Governor is returned, to answer him that he shall take the whole bill or none, then it seems to me that your veto falls to the ground. In that argument I see very plainly that both propositions, that on the side of the gentleman from Onondaga [Mr. Alvord], and that on my side, assume that on the one hand the Governor will do what he ought not to do, and on the other, that the Legislature will do what they ought not to do; but I submit that my argument is just as good as his and just as sound. There is no propriety in bringing the Governor into a question of that kind, any more than there is in bringing the Legislature on the same ground. Therefore I submit that this power as contained in the bill now under consideration, is just and proper, and I think it ought to be retained for the very reason stated by the gentleman in his argument.

Mr. FOLGER — I disagree with the gentleman from Cayuga [Mr. Rathbun], who has just taken his seat, for I believe the effect of the section as it now stands, without giving some, so to speak, veto to the Legislature upon the action of the Governor, will result sometimes in making the Governor the affirmative and sole law-making power of the State, instead of being the negative, upon hasty, inconsiderate or unconstitutional legislation. Let me make an illustration: There was a bill passed last winter by which husband and wife were enabled to testify for and against each other; that bill was composed of three sections; the first section asserted the proposition boldly and simply that the husband and wife might in any case be a witness for or against each other, or any other party; that was an affirmative proposition, it conveyed a single idea, and if enacted alone, would have been a law of itself, complete in itself. But the Legislature, after being asked for five or six years, did not feel disposed to pass that single, complete, succinct proposition, alone and unaffected by limitations, and it added to it two other sections, one of which was, that this power should not be exercised in any case arising from adultery or in any divorce case, and another, that the husband and wife should not be compelled to disclose confidential communications. Here were three propositions that received the affirmative vote of the Legislature as a whole; perhaps no one of them would alone have received it. I know that the first section standing alone would not. But the whole bill did. It then went to the Governor for his signature. Suppose that he had approved of this first section, but disapproved of the last two sections, he would thus have affirmed by his consent and approval the first section, the complete single proposition, without exception or limitation of the right and power of a husband and wife to testify in favor of or against each other; suppose it had their gone back to the Legislature and it had been confined to just this thing, either to disapprove of it as left by the Governor and by a two-thirds vote to reinstate over the Governor's veto the part stricken out, or failing to do that,

to allow the bill to go as a single proposition without restriction or limitation. I say in such a case as that, the Governor is practically the affirmative law-making power of the State. The sole law-making power, for by his veto as to two parts of that bill he has defeated those parts, and by his approval of one section he has passed a law over the heads of the Legislature and against its judgment and desire and put upon the statute book a law that in any case, without limitation or without exception, the husband and wife shall be witnesses against and for each other. The Legislature had refused to go this length. But the Governor did go that length, and no power is retained to negative his action. I conceive that the same principle, the same risk will run through all bills which are at all complex in their nature which are made up of independent propositions, which independent propositions have been considered necessary by the Legislature to affect and restrict or to complete other propositions which might in themselves be indistinct or unpalatable. In a bill of that nature it would seem to me extremely difficult to carry out the proposition of the committee as submitted here; but when you come to the consideration of bills, parts of which may not affect other parts, there I think that this proposition of the committee is more practical and may perhaps be useful. An appropriation bill has been suggested as one of this nature; all the items of an appropriation or supply bill are necessarily distinct, none are necessarily affected by the other, and upon such a bill the Governor may exercise his veto power by affirming some and disapproving of others, and it may be well, though after all, as far as this State is concerned, it is an untried experiment. But upon a bill which is at all complex in its nature, and which requires one part to depend upon the other and to accompany the other and receives the legislative sanction, in my judgment the power of a partial veto would be dangerous and contrary to our theory of the legislative power, and in my opinion it cannot be safely exercised. Even the right of a qualified veto, a negative in the Governor has been by many seriously doubted. But the right of such veto as this now proposed, would make him an affirmative law-maker, and it would place in the hands of one man, the law-making power of the State, subject only to the restriction which might be found in the dissenting two-thirds vote of each house of the Legislature. I think such a proposition is open to grave objections, so grave as to forbid our acquiescence.

Mr. PRINDLE — Is an amendment now in order?

The CHAIRMAN — An amendment is in order, but one amendment is pending.

Mr. PRINDLE — I offer an amendment.

The SECRETARY proceeded to read the amendment as follows:

Insert after the word "signature," in line 21, the following: "But the Legislature may reject the remainder of a bill after the Governor shall have refused to approve a part of it."

Mr. FOLGER — I would suggest to the gentle-

man from Chenango [Mr. Prindle], whether this language would not perhaps be better.

In line 21, after the word "signature," insert the following: "And either house may by a like vote decide that no part of the bill shall become a law. And in that case the bill and every part thereof, shall fail to become a law."

Mr. PRINDLE—I accept that language.

Mr. GREELEY—I shall propose an amendment in the very opposite sense of that, when it shall be in order to move it; and it would properly come in after the word "signed" in the third line, it is as follows:

"And if he approve only of certain sections or portions of it, he shall certify such approval to the Legislature; and all the sections or portions so approved shall be transmitted to the Secretary of State, and recorded by him as a law."

It does seem to me that the proposition on the other side of the house tends entirely to negative and destroy this salutary power of partial vetoing which it is intended by this section to establish. I make that objection to much of the section as it appears on our files. What I would desire is, that the Governor should have a simple, clear, absolute power to say, "I object to that section," and thereby to put that section on its passage before the Legislature by a two-thirds vote, while allowing all the rest of the bill to go to the Secretary of State's office to be certified and recorded. It does seem to me that, if you put these conditions upon it, you will nullify this power of partial vetoing. The Governor objects to a section: well, the Legislature, to punish him for striking out a wrong and injurious proposition embodied in a bill, may say, "We will kill the whole bill, then." I don't want to give that power to them. Here is our city's annual tax-levy; it is in the main a fair and just levy, but there are two or three corrupt propositions in it; I want the Governor to have the power to veto those propositions, at the same time approving the rest of the bill and sending it to the Secretary's office, and then let these items objected to go back to the Legislature and be passed by a two-thirds vote on a distinct yea and nay division, if they can be so passed; but I want to isolate and segregate them from the rest of the bill, and put them plainly and fairly in the face of the people. It is this bill which, as it were, covers up the proposition these gentlemen are voting for; they are voting to pass over the Governor's head those corrupt propositions which he by his veto struck out of the bill. Now, if the section be so amended—I care nothing for the words—it will be greatly to my satisfaction; but the proposition now made seems to render the section even less acceptable than in the report before us.

Mr. HALE—The object of the committee in reporting this provision was undoubtedly a good one. It was to enable the Governor to defeat objectionable portions of a bill without defeating the whole of it; but it seems to me that in trying to accomplish this they have put it in the power of the minority of the Legislature, provided that minority exceed one-third, and is in sympathy with the Governor, to enact laws which would be objectionable to the majority,

and which never could receive the sanction of the majority. There is hardly any law from which certain portions may not be taken, so as to leave the residue objectionable to the majority who passed the bill and to commend it to the minority who opposed it. The case put by the gentleman from Ontario [Mr. Folger] illustrates this very clearly. A law is passed with certain provisos and conditions, stated, it may be, in "separate and distinct provisions," the main proposition of which, separated from those provisos or conditions, could not command a majority of the Legislature, but would be approved by a minority exceeding one-third. The Governor, we will suppose, is with the minority on that subject; the majority pass the bill and the Governor sends it back, disapproving of these qualifications and provisos annexed to it leaving it just as the minority would wish it, but in such a shape as to be offensive to the majority. The result is that the Governor and the minority establish that law in defiance of the majority of the Legislature. The amendment suggested by the gentleman from Chenango [Mr. Prindle], I think is too general, as it applies to appropriation bills as well as to others; I think the principle of the committee could well be applied to appropriation bills, and that the amendment offered by the gentleman from Onondaga [Mr. Alvord], would meet the difficulty. I think that should be modified, however, so as to limit the veto power of the Governor, to such portions of the bill as appropriate distinct sums of money for distinct purposes. With that modification, I think that it is all we can properly do in that direction. The amendment offered by the gentleman from Chenango [Mr. Prindle], does too much; it prevents the Governor from effectually exercising the power of partial veto in any case. I think he might be given this power, appropriately, in the case of the supply bill, and similar bills. In my opinion the correct proposition is that made by the gentleman from Onondaga [Mr. Alvord].

Mr. WAKEMAN—I think the gentleman from Westchester [Mr. Greeley] will see in this section reported, that it would do precisely what is suggested by his amendment. This section empowers the Governor to veto any distinct part of the bill containing a distinct and separate provision, and the portion that he objected to, to be returned to the Legislature and give the Legislature the power to enact the entire bill as a whole, and if they fail to do so the other portions of the bill approved by him become a law as a matter of course. In case the Legislature shall conclude in their wisdom to pass the bill over his veto, or, in other words, pass the portions objected to by the Governor, why, then, the bill would go to the Secretary of State's office as an entire bill in and of itself, and not in parts, so that the point raised by the gentleman from Westchester [Mr. Greeley] would be substantially gained by adopting this section as it stands. On the subject of the amendment of the gentleman from Chenango [Mr. Prindle] that very subject was discussed in the committee with some degree of care, and we came to this conclusion, that if you should allow

the Legislature on objection being made by the Governor, to pass a portion of a bill which he should disapprove, by a bare majority, or in other words to refuse to pass any portion of the bill, it would take away every object that we have to giving this power of vetoing a portion of a bill. For instance, Mr. A, B and C, may join together and vote for a bill as a whole, and portions of that bill may be very proper in and of themselves. Now, when Mr. A's portion is stricken out by an executive veto, he and Mr. C may combine and may say "Now with that portion stricken out, we will go against the entire bill; we do not have the privilege of adopting what is good in a bill and striking out what is bad." This very question was considered, and we thought it much safer to allow the Governor to retain what the Legislature had as a whole proclaimed was a good bill and to strike out portions of it; and where it was so apparent that the portions stricken out ought to be re-enacted if a two-thirds vote could be obtained, pass it over the executive veto. Again, sir, on that point we considered that all bills were subject to repeal; it would be the subject of repeal, the whole bill or any part of it that should become a law. On the point raised by the gentleman from Onondaga [Mr. Alvord] to confine this section to appropriation bills, that subject was also considered by the committee, but we thought that the principle might be retained to apply to portions of a bill which contained separate and distinct provisions. The gentleman from Ontario [Mr. Folger] has instanced a case where the Governor might strike out portions of a bill, where perhaps the Legislature, being honest in their views on the subject might not have passed it with that portion stricken out. I can hardly conceive of a case where the Governor would undertake to exercise the veto power on such a bill as that cited by the gentleman from Ontario [Mr. Folger]. In all such cases he would be careful to see where it was his duty to exercise that power; and whether or not the principle, the right to strike out portions of a bill had not better be retained, rather than to adopt the amendment of the gentleman from Onondaga [Mr. Alvord], on the point he has suggested. We have discovered that the Convention of 1846 provided partially against this difficulty, by prohibiting the Legislature from passing any laws except what should be distinctly stated in the title of the bill — that it should indicate the law to be passed. Now, that cannot always be done; they may do that and be constitutional, yet there may be a section in the bill that is absolutely objectionable and that ought to be stricken out, and that part of the bill that is worth retaining should be retained; and this section gives the power to the Governor to retain it. I take it, from what has been said here, there is a disposition to allow the Governor to veto portions of the bill, particularly referring to appropriation bills. I think, on that point, every member of this committee must see the necessity of it. The past history of this State in the hurried legislation and the many appropriations that are put into supply bills and into appropriation bills, at the last hours of the Legislature, are absolutely dan-

gerous, and for the purpose of forcing the Governor to sign the bills in order to carry on the government, men will insist upon putting in appropriations of a character which are absolutely obnoxious. I recollect, in 1856, in this hall, when there was an attempt to defeat the appropriation bill and the supply bill, when both were defeated, when they did not become a law at all. The object then was to force the Governor to call an extra session of the Legislature. That was by a combination of elements of which it is unnecessary now to speak, but the result was that it adjourned absolutely without passing either of those bills at that time. Then it was not so particularly in reference to the obnoxious bills as it was to a combination of members to force an extra session. If we had been compelled to pass the bill at that time, and go through with it, item after item, that were placed in the supply bill and appropriation bill, the difficulty would have been surmounted by the Governor if he had had the power to do so. These bills, it is well known, come up at the heel of the session, when there is a hurry of business, and the subject-matter of appropriating thousands and thousands of dollars hardly could receive a consideration. Mr. A. moves to insert a certain article for an appropriation for a certain charitable institution located up in Genesee county, for instance, and members do not know anything about it, even whether there is such an institution there, and I am told that appropriations have been passed here of this character where there was no such institution at all, except as it was made up at a tea-party or something of that kind. Now I submit, on all these questions, if the Governor had the power to review the subject-matter of appropriations and strike them out, I believe it would be a great benefit. Now the question is whether it is not better to retain the same principle to apply to other portions of bills if we are to have Legislatures such as we seem to suspect in this Convention. The history has been such, sir, of past years that we have been led to suppose that by a combination of effort there may be a great many objectionable features passed in a bill not proper to become a law. It was instanced the other day by the gentleman from Ontario [Mr. Folger]; he said Mr. A. had a bill and Mr. B. had another; they would not be in the same bill, it is true, but they would combine to vote for the bill of each other. That is carrying out the plan in and of itself where neither one of the measures could be sustained alone, but by a combination, "You vote for mine and I will vote for yours," they can pass them all, when perhaps not one of them could stand alone. The same principle is involved in a single bill, or it makes it so. A may be induced to vote for a bill which could not otherwise be carried through; but by retaining what is good, and striking out what is bad, we may with propriety leave it to the Executive, because the Executive would be very cautious how he exercised that power in a bill particularly not appropriating money.

Mr. PRINDLE—It seems to me that the princ-

ple contended for by those who support this section as it stands, is very extraordinary indeed. It amounts simply to this: it allows laws to be passed without the consent of the Legislature. Now, if a bill is passed by the Legislature, and sent to the Governor, and he refuses to approve a portion of it and the Legislature has never consented to pass the remainder of it, if the Governor has power to make the remainder of it a law, it is done without the consent of the rightful law-making power. It is said that after the Governor has refused to approve a portion of the bill, the Legislature from malice or some other corrupt motive may refuse to adopt the remainder of it. That is very true. But are we to presume that the Legislature will for the next twenty years act continually from corrupt motives? May not the Governor also act sometimes from bad motives? Are we not rushing to the other extreme in adopting this section as it stands? It seems to me, we must trust the Legislature to pass laws. If we do not, we may as well abolish the Legislature and give the power to the Governor.

Mr. BECKWITH—I am not entirely satisfied with either of the amendments proposed for the consideration of this committee, and at the proper time I intend to offer the following amendment: "Strike out after the word 'Governor' in the nineteenth line, the residue of that line, the twentieth and twenty-first lines, down to and including the word 'signature,'" and instead of that insert this: "That those parts of the bill which the Governor approve shall not become a law without being again passed by both houses of the Legislature by a vote necessary to pass the original bill," so that when he approves of a part of a bill it shall not become a law unless it be again passed by both houses of the Legislature, in which case if it do pass both houses, then it shall become a law. I think that will meet the whole objection that has been raised to this section.

Mr. C. L. ALLEN—If gentlemen will reflect, they will see that the object of this committee will be entirely frustrated if the amendment offered by the gentleman from Chenango [Mr. Prindle] is to prevail. The section does not, in my judgment, place it in the power of the Governor to legislate or prevent the passage of a bill properly passed by the Legislature. On the contrary, it provides for the safety of all unobjectionable measures in a bill, while it provides for the defeat of all odious features of a separate and distinct character contained in it, and which would never have received the sanction of the Legislature if proposed in a separate bill. There will be no difficulty in discriminating. Every section relating to or connected with the subject-matter contained in a bill, must be retained and stand or fall with the bill, while a separate and distinct section or sections proposing an entire new measure, or an independent appropriation will also be cast upon their own merits, and can be rejected if detrimental to the public interest. It has been well remarked by the gentleman from Westchester [Mr. Greeley] in regard to this subject, that the great object will be defeated by the adoption of this

amendment. He well remarks, if the Legislature pass a bill of this kind that we are now speaking of, obnoxious in some of its features, while some are favorable and ought to receive the sanction of the Governor, as well as of the Legislature, and become a law—a Legislature, or that portion of them that have been in favor of the obnoxious provisions of a law submitted to the Governor, may turn about and vote against the other provisions of the law to which there is no objection and which have received the Governor's approval, and they defeat those provisions because the Governor disapproved of their obnoxious measures, and of their attempt to rush through odious and improper matters. The objection, the gentleman says, may operate both ways. You may presume in one instance, that the Legislature may be corrupt. But you are not to presume it for the next twenty years, for you certainly have had no ground to presume it for the last ten years. But he says the other horn of the dilemma may present itself, that the Governor may have power to pass laws which the Legislature have not adopted. A moment's reflection will show the gentleman there is no solid foundation in that objection. In the first place he fails to remember that the Legislature will have passed the unobjectionable features before the bill is presented to the Governor for his signature, and as far as they are concerned it has already become a law, and the Governor has nothing to do but affix his signature to it and put it upon the file of the Secretary and it will become the law of the State, and therefore the Governor is not passing a law, or is not enforcing a law which the Legislature has not adopted, but he is objecting to that part of the bill which is obnoxious to him, and he believes obnoxious to the well being of the people; in other words, he is approving of one bill and disapproving of another, and to that which may be designated as bill No. 2 in the same enactment part of the bill he sends his objection. The Legislature says, "We have passed that law or that part of the bill to the unobjectionable features of which you have affixed your signature, but as you have disapproved of the separate and odious law contained in the same bill and which your oath will not permit you to sign conscientiously, we will not consent that the bill which we have already passed, shall become a law. It is putting it back entirely in the power of the Legislature to defeat a good law and not in the power of the Governor to pass one which that body has not sanctioned. He sanctions nothing but what the Legislature has already passed before the bill came to him for his signature, therefore the objection returns, it appears to me, to the amendment of the gentleman from Chenango [Mr. Prindle], that a bill may retain certain provisions which are obnoxious in their features, unless the Governor has power to disapprove of them, and connected with some necessary provisions which must pass, if they pass at all, with the objectionable portions, and thus the Governor must approve of that portion of it which is obnoxious in all its features, or the whole bill must fail to

become a law. It appears the gentleman does not understand, and perhaps the committee have failed to present in such a manner as to enable him to understand, the reasons which operated upon the minds of the committee in presenting this amendment. It is not proposed to check the provisions of any one section relating to the particular subject-matter contained in a bill, or that certain sections of that particular measure may be rejected by the Governor; on the contrary, every section pertaining to the particular subject-matter of the bill is to be retained. It is only a law which ought to have been presented in a separate bill, or which might probably form a separate bill independent and distinct, and adroit in its provisions, that the committee intend to reach by their amendment, the same as if two laws different and separate in their provisions were sought to be incorporated in the same bill, and the Governor is empowered to approve of one and disapprove of the other. The objection of the gentleman from Ontario [Mr. Folger] is thus obviated. For instance: The bill referred to by him relating to a husband and wife being witnesses for and against each other, which he says contains separate sections in providing for separate details as illustrative of his objections, does not apply. The amendment does not provide that separate objections may be made to any one of the sections in detail, on this subject, and which are parts of the same bill, and therefore could not be separate. All the sections pertaining to the same general subject-matter would be retained and the Governor would have no right to interpose his veto to any of them separately. But suppose that same bill included another subject-matter, entirely different in its nature and object, and contained provisions which would be very properly the subject-matter of a bill by itself, instead of being incorporated in the bill relating to husband and wife, and actually obnoxious in all its features, these are the separate and distinct provisions to which the committee refer in this section. Let me read that part of it. "If he approve of the bill, he shall sign it, but if he disapprove of it, or any part or parts of it, containing separate and distinct provisions, he shall return it," etc.

Mr. BECKWITH — "And subjects," put in there, and that will cure it.

Mr. C. L. ALLEN — "Distinct provisions," etc., relates to "subjects" that might properly be inserted in a separate bill. I recollect a little instance that occurred several years ago which may somewhat illustrate our idea. Perhaps the provision in the Constitution of 1846 has guarded against the frequent repetition of what I shall relate, to a certain extent, by requiring that every bill shall contain in its title the subject-matter of its provision, but this little incident, I think, may have some bearing on the remedy which the committee intend to commend. I recollect several years ago, under the old insolvent act of this State, I was engaged as counsel in endeavoring to procure the discharge of an insolvent debtor, and was opposed by a gentleman representing certain creditors residing in the city of New York. I supposed

I had complied with all the provisions of the act on that subject and particularly the section relative to the publication of notice, and advertised in the State paper and the newspaper the requisite number of weeks required by the insolvent law, as I then understood the old two-thirds act, as it is called. My friend who opposed me gave me notice several times during the pendency of the advertisement that I would fail in procuring the discharge, could not for the life of me see why. I felt that more than two-thirds of the creditors had signed off, and that I had complied with all provisions of law on that subject, and I could not conceive what was operating on the mind of my friend. When we came down to the hearing on the day appointed before the judge who presided over the proceedings, I was met by the last section of an act in the title of which was "An act for the inspection of sole leather and for other purposes." I did not know it but it had been incorporated by my friend who was a member of the Legislature the winter before. It was substantially as follows: "Be it further enacted that any insolvent debtor who may have a creditor or creditors residing in the city of New York whose demands shall amount to one-fourth or one-third of all debts shall advertise and give notice in a newspaper published in that city," and having failed to do that, from an ignorance of that section the judge interpolated. Sure enough, my friend tripped me up, and we were obliged to commence proceedings anew. Who would have dreamed to have found a section of that kind contained in an act entitled "An act for the inspection of sole leather and other purposes?" I know that it is guarded against partly by the Constitution of 1846, requiring each bill to contain in its title a definition of its subject-matters, but we have seen that notwithstanding that measure separate and independent provisions have crept into bills in that way and have passed into law; not only when members of the Legislature did not know they existed, but when they came to go home and their constituents inquired about them, they could not answer a question concerning them. My friend from Onondaga [Mr. Alvord] who introduced this amendment, in the argument he makes in support of it, makes an affirmative one, in my judgment, in favor of the section as reported by the committee. He says in regard to the appropriation bills, and in regard to the tax bills, and particularly the omnium gatherum bills, there are oftentimes sections inserted for appropriating money to different individuals for different purposes. And in that way it would be safe to intrust the Governor with the power to approve of some and disapprove of others. Might not the same argument extend itself to bills of another nature where articles may be interpolated of a separate and distinct nature, and as entirely independent of each other as the several appropriations in the omnium gatherum bill? And which will make it as proper an act for the Governor to veto particular sections and approve of others, as in the tax bill, or other bills to which he alludes? You have only to extend

that argument, only to extend the proposition, and its propriety is perfectly manifest in the one case, it appears to me, it is certainly as clear as in the other. Now, sir, in regard to the amendment of the gentleman from Clinton [Mr. Beckwith], who says, when the proper time arrives he will propose it, it appears to me, the section provides substantially for what the gentleman from Westchester, [Mr. Greeley], proposes to introduce, only in different words. The committee were careful in drawing up this section, in the phraseology that we used. There were several sections drawn up by different members of the committee for the purpose of obviating many objections which have fallen from gentlemen on this floor, and we endeavored to make it as perfect as we could, and I think the section provides, substantially, for the amendment, so as to make it unnecessary to be offered by the gentleman from Westchester, [Mr. Greeley.] In regard to the other amendment to be offered by the gentleman from Clinton, [Mr. Beckwith,] I have nothing to say now—but will wait the further deliberations and conclusions of the committee.

Mr. CHURCH—I have no doubt that the committee in introducing this radical change from the Constitution of 1846 did it with the very best intentions, and there is, in cases which may be put, considerable plausibility in it, but I am perfectly satisfied that it is wrong in principle and should not be adopted as a part of the Constitution of the State. Now it has been shown by other gentlemen, and it is easy for every member of this committee to see that it will make the Governor a part of the affirmative legislative power of the State. Now the theory of our government is that the legislative and executive power should be entirely separate and independent of each other. The Legislature acts for itself. It enacts the laws, perfects the laws and the whole duty which the Executive has in relation to a law is to interpose his negative power, his objection to the bill, as it is presented to him. It is no part of his duty to select out a provision in that bill and return it to the Legislature, and ask them to reconsider that particular provision, and gentlemen can see that it will lead to chaffering and to trading between the Executive and the Legislature in relation to different provisions of the bill. Now the gentleman from Ontario [Mr. Folger] has shown conclusively in the case which he has cited, that it will be in the power of the Governor to pass a portion of a bill in opposition to the wishes of the Legislature itself. My friend the chairman of the committee has said in answer to that, that he can only object to separate and distinct provisions. Who is to decide what separate and distinct provisions are? and what great difficulties there are in determining what are separate provisions and what are distinct provisions? It will lead to all sorts of litigations and difficulty. You may take it in the most plausible case put by the gentleman from Washington [Mr. C. L. Allen] in relation to the supply and appropriation bills. He says the Legislature often passes these bills without proper legislation. That is

very true. And that they go to the Governor and he has to veto the whole bill or sign the obnoxious provision. That is very true. But if he strikes out those provisions of the bill and sends it back, the forcing process is on the Legislature. They are compelled either to acquiesce in the veto of the Governor, or to pass a bill which they do not approve. It seems to me the practical operation of this veto power is very simple, and that the evils will be far less, if left as it is now in the Constitution, than to incorporate this radical change. If the Governor deems an obnoxious provision of so much importance as that he ought to veto it, he vetoes it for that reason, and sends it back to the Legislature, and then it is in the power of the Legislature, if they regard the bill of sufficient importance to pass it without that provision in it, to pass it in that form. It is in their power to do so, but I do object to mixing up the Legislature with the Executive in passing laws. I think the evil that will follow from it will be greater than any evils that can be imagined in the provision as it now stands. I hope some gentleman will introduce an amendment at the proper time incorporating this article of the Constitution of 1846 with two modifications. One is that on the return of a bill, after it has been vetoed by the Governor, to either house, it shall receive a two-thirds vote of all the members elected to pass it, instead of two-thirds of those present; and the other is cutting off the right of the Governor from signing a bill after the Legislature adjourns. With these two modifications, I do not think we can improve on the present Constitution.

Mr. A. J. PARKER—Before a vote is taken, I have something to say about this section. I understand the gentleman who last spoke [Mr. Church], to object to the plan of the section which enables the Governor to interpose his veto to a portion of a bill. This is really the principal part of the amendment in regard to which I was in hope there would be no controversy. The gentleman says it enables the Governor to participate in legislation. I do not see it in that light; I do not see how it can be viewed by others in that light. His is the veto power. This enlarges the veto power—that is all. As the Constitution now stands he vetoes the whole bill. We propose to enlarge his power, and to enable him to interpose his veto to any portion of a bill, if it be a distinct and separate provision. Now I believed that this proposition would meet with general favor. It has been adopted in two of the States, and is in successful operation, satisfactory I believe to all, as far as I know.

Mr. FOLGER—Will the gentleman state the two?

Mr. A. J. PARKER—Tennessee, and I believe Texas. I must say, in common fairness, I believe it was a provision in the Constitution of the so-called Confederate government. In truth that was to my mind, in the first place, an objection to it. I did not quite like the example, but I remembered to have been taught the old maxim, *ius est ab hoste doceri* (we may take a good idea even from our enemies), and I could

not see that a good principle ought to be rejected because it had been used by rebels. I believe the principle a good and a sound one, that the Governor should have the veto power extended, that we should avoid a great evil which even my friend who has just spoken, admits to exist, in putting into bills provisions admitted to be wrong, and sending them to the Governor under such circumstances that he is obliged to let them pass and approve the whole bill or veto the whole bill, and by doing so bring a great injury upon the public. I am in favor of the veto power in this State and in favor of enlarging it. It is a conservative power, it has been approved by the people during the last twenty years. The veto power that has been exercised by the Governor of this State has been approved and sustained by the people. It has been a conservative power well directed in the prevention of the passing of bad laws, and I venture to say whenever a difference of opinion has arisen between the Legislature and the Governor, the public sentiment has sustained the Governor and not the Legislature. Now, if it is true as conceded that it is the practice to put in bills provisions which are palpably wrong, and so known to be to all for the purpose of compelling the Governor to sign a bill, where is the objection to enabling him to veto these provisions and to approve of the rest of the bill? I confess I can see none. I cannot see that it enables the Governor at all to interfere with the legislative power. It simply vetoes. He stands within his own room, and forbids what the Constitution enables him to do. If it is true that it is any participation at all in legislation, it is upon the argument made by the gentleman from Chenango [Mr. Prindle]. If the Legislature are compelled to pass the remaining portion of the bill as a separate bill, there is force in the suggestion of the gentleman from Chenango [Mr. Prindle], that to that extent there is an interference by which it is not left to the Legislature to judge for itself. The veto so far interferes with it. In regard to that provision, I must say, there was some little difference of opinion in regard to it in the committee, whether, when a bill was sent back, and a portion of it was objected to, and if the Legislature fail to pass the entire bill, whether they were at liberty to recede from the part that was not objected to by the Governor. I say I was one in favor of allowing the Legislature that liberty. I was not very tenacious about it, and I cannot see any wrong to come from it, and I acquiesced in the provision, though different from the one I had drawn on the subject. I care very little for that provision whether it is retained or amended, as suggested by the gentleman from Chenango [Mr. Prindle], and it matters but little. If it is to be changed, and if you intend to give the Legislature the power to recede from that which is not vetoed, I suggest to the gentlemen moving in that direction, that the amendment be made in this form, as embodying all that they ask by inserting a few words which will not interfere with the rest of the section. Strike out all in the nineteenth line after the word "Governor," and all of the

twentieth line to the words "be engrossed." That is you strike out "shall without unnecessary delay, after the vote be taken on a reconsideration," and insert in the place "and if it shall be so ordered by both houses, a vote sufficient to pass the original bill," and will read, "if either of the two houses shall then approve of the part or parts objected to, a bill containing such part or parts as shall be approved by the Governor, may, if it shall be so ordered by both houses by a vote sufficient to pass the original bill, be engrossed, and a separate bill returned to the Governor for his signature." Now it does seem to me there is justice in this for this reason. It is in the power of the Legislature in all cases now when a bill is vetoed by the Governor and returned to them and they fail to get the necessary vote to pass it over the veto, it is always in their power to originate a new bill embodying a portion of it, and pass it and send it to the Governor for his signature. It may be said there is not time to do that after a portion of the bill is vetoed, therefore the committee may prefer, instead of compelling them to go through all the forms of legislation in regard to the portion of the bill not objected to, that may be put in the form I suggest and if each house approve the remainder of the bill by the many votes as the Constitution requires to pass it, that then it may be sent to the Governor for his signature. I must say a word, however, before I leave this subject, in regard to the objection made by the gentleman from Oneida [Mr. Alvord]. I understand him to prefer that this veto power should be confined to supply bills and appropriations. While I admit the great evil is there, I do not suppose there is a single session of the Legislature where they do not put into—

Mr. ALVORD—Does the gentleman understand me to say I am in favor of the veto power being entirely withdrawn from all other bills?

Mr. A. J. PARKER—No, perhaps not. I do not know that I understood the gentleman correctly. I understood the gentleman to say he wished it to be restricted to a certain class of bills?

Mr. ALVORD—That is only as far as regards parts of bills.

Mr. A. J. PARKER—I meant so far as regards parts of bills, of course.

Mr. ALVORD—The statement that the gentleman made might convey the idea that I was opposed to the veto power of the Governor, except in the case of appropriation bills.

Mr. A. J. PARKER—As I understand it, the gentleman is opposed to the power to veto a portion of a bill except as it applies to an appropriation bill.

Mr. ALVORD—I am in favor of having the veto power applied to all bills.

Mr. A. J. PARKER—I admit the veto power restricted as he desires it would accomplish very much good. But I do not think that is all which is required. There are many bills passed containing separate and distinct provisions, different subjects which it seems to me there is just as much propriety in allowing the Govern-

nor to veto a part of the bill and the Legislature to pass the balance as is the case in the supply bill. The gentleman who last spoke says you open the question whether they are separate provisions. Very well, I see no difficulty in that. When your bill is vetoed, it is sent back to the Legislature, and they have the whole power over it. They may overrule the veto and pass the whole bill, although the objection is to a portion of the bill, and if it be to the portion of the bill that does not constitute a separate and distinct portion of the bill, will not the Legislature override it and pass it over the Governor's veto? I see no difficulty in regard to that. I regard the principle of vetoing a part of the bill, as valuable and one which I hope to see adopted, and I hope it will be extended to all classes of bills; but as to the amendment of the gentleman from Chenango [Mr. Prindle], I shall not contend against the right of the Legislature to retain the remaining portion of the bill if they see fit.

Mr. PROSSER—If this section is to be adopted, whereby the Governor is to interpose his objection in the aggregate, and in the detail, as herein proposed, and the amendment now pending should not be adopted, then I think I shall, if I get an opportunity, propose the following, which I shall now read as a part of my remarks at the present time. After the word "provision," in the fifth line, insert, so that it will read, "but if he disapproves of it, or of any part or parts of it, containing any separate provision, not directly or indirectly affecting any other portion of the bill." I think the language as it now stands in the report of the committee, is scarcely strong enough, as I before remarked, if the bill is now to be adopted without this pending amendment.

Mr. PRINDLE—I am willing to accept the language proposed by the gentleman from Albany [Mr. A. J. Parker].

Mr. EVARTS—Certainly the committee have done a very good service in the section relating to the Governor's veto power, as it is usually called, in providing that a two-thirds vote of all the members of the Legislature shall be necessary to pass a bill over his veto, and in restricting the exercise of his power to a session of the Legislature. Now, Mr. Chairman, we are to consider, I suppose, for the purpose of this debate, whether it is wise to confer upon the Governor this new power of taking part in legislation actively, and which the section, as reported by the committee, permits, that is, to interfere with the details of laws. The amendment last proposed by the gentleman from Albany [Mr. A. J. Parker], takes out all the substance of this measure, reported by the committee, for the Legislature now have the power of passing bills, omitting the obnoxious sections. But the section as reported by the committee gives the Governor an active power in legislation which, permit me to say, he has never had to any extent before. The Governor has had no power or function in the Constitution that could incorporate his wishes into a modification of the legislation produced by the Legislature. It is incorrect to say that he can prevent the passage

of a law. Certainly he never had any power to take a finger in changing or modifying a law. He really had no function at all in legislating. He had simply this authority, to recall the Legislature to a reconsideration of its duty; and the Constitution which reposed that power in his watchful oversight, has itself imposed upon the legislative action, the necessity of gaining an increased majority for a measure to which the Governor had found it his duty to recall their attention. Now a bill may contain a provision which has been a subject most debated in the Legislature, which, perhaps, had been made the subject of a distinct motion to strike it out from the body of the bill, and the Legislature has by a majority vote refused, and they have passed the bill with that clause in it, absolutely refusing to adopt the legislative measure unless it were so included. The Governor now has a right to find that single clause obnoxious to his judgment, and a good ground for recalling the Legislature's attention to that bill, because of the obnoxious provision, and then they are put to the constitutional necessity of finding the approval, not of that obnoxious measure, but of the entire bill, notwithstanding the obnoxious measure, by a constitutional vote of two-thirds of the members elected. That is all very well. But if this power, as reported by the committee, is left with the Governor, he is placed in the distinct position to exercise the true legislative functions of striking out that clause and the Legislature is compelled to say whether it will itself lose the bill without the clause or whether it will adhere to that clause. Now, Mr. Chairman, it is a great mistake to suppose that the Legislature ever sends its enacted will to the Governor, expressed in sections or in parts. The legislative will is the final conclusion of the whole measure, as it is in the entire law, and when the Governor has recalled its attention and it fails to find a sufficient constitutional vote to pass that measure, the measure is dead. The legislative authority is complete and entire to reinstate what parts of the bill it chooses to present as a law, so that I must think this amendment of the gentleman from Albany [Mr. A. J. Parker] if adopted, destroys any substantial efficacy of the section. I deny that the Governor by our Constitution has any share in our affirmative legislation. This will give him an affirmative share in our legislation. I deny that the Legislature ever expresses its power in sections or in parts. It expresses its will in a law, and that must stand or fall as the legislative act.

The question was then put on the amendment of Mr. Prindle, as amended, and it was declared lost, on a division, by a vote of 39 to 40.

Mr. VAN CAMPEN—There is no quorum voting.

The CHAIRMAN—The Chair is convinced there is a quorum in the hall. Gentlemen will please vote one way or the other.

The question was again put on the amendment of Mr. Prindle as amended on the suggestion of Mr. Parker and it was declared carried by a vote of 69 to 31.

Mr. RUMSEY—I offer an amendment.

The SECRETARY proceeded to read the amendment as follows :

Substitute for the eighth section the following :

Every bill which shall have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve he shall sign it, but if not, he shall return it with his objections to that house in which it shall have originated, which shall enter the objections at large on the Journal, and proceed to reconsider it. If after such reconsideration two-thirds of the members elected to such house shall agree to pass the bill, it shall be sent, together with the objections, to the other house by which it shall likewise be reconsidered, and if approved by two-thirds of all the members elected to each house, it shall become a law notwithstanding the objections of the Governor. But in all such cases the votes in both houses shall be determined by ayes and noes, and the names of the members voting for and against the bill shall be entered on the Journals of each house respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it unless the Legislature by its adjournment prevent its return, in which case it shall not be a law. And no bill shall become a law unless approved of and signed by the Governor during the session of the Legislature at which the same was passed, or the same be returned by him with his objections and be reconsidered and passed as aforesaid.

The hour of two o'clock having arrived, the PRESIDENT resumed the chair in Convention, and under the resolution of yesterday announced that the Convention would take a recess until half-past three o'clock.

AFTERNOON SESSION.

The Convention re-assembled at half-past three o'clock P. M., and proceedings were resumed.

Mr. BARKER—I ask leave of absence for myself until Wednesday morning.

There being no objection, leave was granted.

Mr. SILVESTER—Is it in order to renew the motion which I made this morning?

The CHAIRMAN—The Chair understood that motion to have been entertained and to have been entered on the Journal.

Mr. SILVESTER—I move to reconsider the vote by which the first section of the article of the Committee on Corporations was adopted.

Mr. ALVORD—I desire to ask leave of absence for myself from to-morrow, for the rest of the week.

There being no objection, leave of absence was granted.

Mr. CHURCH—I desire to ask leave of absence from to-day until Tuesday next.

There being no objection, leave of absence was granted.

Mr. GARVIN—I desire to ask leave of absence after this session until Tuesday morning next.

There being no objection, leave of absence was granted.

Mr. BEADLE—I desire to ask leave of absence from the session of to-morrow, until next week.

There being no objection, leave of absence was granted.

Mr. ANDREWS—I desire to ask leave of absence for Friday.

There being no objection, leave of absence was granted.

The Convention again resolved itself into Committee of the Whole on the report of the Committee on Governor and Lieutenant-Governor, etc., Mr. KERNAN, of Oneida, in the chair.

The CHAIRMAN announced the pending question to be on the amendment of Mr. Rumsey to the eighth section.

Mr. RUMSEY—I offered that amendment for the purpose of returning to the position of the old Constitution of 1846, except so far as it may be desired to remedy palpable defects which have already been discovered in that Constitution. The first of these defects is this : When the Governor returns a bill with his veto, less than a majority of the members elected to either house may pass the bill. This is a palpable defect. Another thing which has resulted in a great deal of evil, is the allowing of a bill to remain in the hands of the Governor, and to be approved by him at any time during the recess of the Legislature at his pleasure; and the only effect of this has been to turn the tide of lobbyism from the Legislature to the Governor, and leave him subject to the annoyances of being urged improperly, it may be, but, at any rate, to the annoyance of being urged to sign bills when he should be subject to no such annoyance. That is all there is to say on that subject. The bill that passes should be signed and sent back to the Legislature before the Legislature adjourns, so that, when they do adjourn, they may know what they have done, and the legislation of the State will stand as they have left it. But the principal objection to this system, proposed in the report of the committee, is the allowing the Governor to approve a part of the bill, and disapprove another part. That I am opposed to, for the simple reason that he may pick out a portion that is not objectionable to him, and which, if the Legislature had been compelled to take standing alone, they would not have looked at for a moment; while in the provision made in the section that is reported by the committee the Legislature have no option upon that subject; but they are compelled to take such part as the Governor shall approve of, and pass it into a law. The amendment proposed by the gentleman from Albany [Mr. A. J. Parker], and which has been adopted by this committee, is entirely immaterial. The Legislature have the right to adopt and to pass any law, whether the Governor approve a part or the whole of it; and it is entirely useless to put that provision in any Constitution. If you adopt the provision which is reported here by the committee who have reported this article, you may as well strike out the amendment of Judge Parker; because, unless you compel the Legislature to adopt the portion approved of by the Governor they are at liberty

to do it or not, from the powers of legislation which are given to them by the Constitution, and which they retain to themselves, unless they are restricted in some way, by the operation of constitutional enactment, from using it.

Mr. ALVORD—I am inclined to vote for the proposition of the gentleman from Steuben [Mr. Rumsey], with the understanding that, when that proposition shall become the proposition of the committee, it will be entitled to further amendment. I desire, for myself, if possible, to perfect an article which shall give to the Governor the power to veto specific matters in the appropriation and supply bills. I think, when we have gone in that direction as far as we can, we shall have done all in that regard, in reference to partial vetoes, that we should have done. Another thing, sir; I desire, also, in voting for this amendment, it will be understood as being in favor of, and if no one else shall do so, I shall move to add a further amendment, giving to the Governor ten days after the adjournment of the Legislature, in which to sign a bill. Sir, in the manner in which legislation is carried on in this State, and in other states in this Union, the last hours of legislative life are the hours in which a large portion of the bills are passed. It is simply a physical impossibility for the Governor of this State to look over those bills when they shall have been passed by the Legislature, and undertake to sign such of them as are not, in his opinion, objectionable, and return them to the Legislature, within less than that length of time. It is perfectly well known to every one who hears me, who has had any legislative experience, that when the Legislature get through with their business, they adjourn, leaving this mass of bills in the hands of the Governor, to be signed by or to fall between themselves and the Governor; or if they desire to have the Governor approve certain bills, they continue to linger around these halls, waiting for him to give his approval or disapproval; they linger at the expense of the State—getting up other schemes, or opposing still further schemes. Now, sir, if the Governor shall be restricted to some ten days, after the Legislature adjourns, we shall have accomplished all we desire, and there will not be running through the entire of the recess, an occasional passage of a bill by getting the signature of the Governor, and running to the Secretary of State's office with it down to the 31st of December. I have been informed this afternoon by the deputy Secretary of State, that in this month—withstanding the fact that it is the month of August, and past the middle of the month—that the attaches of that office have just completed their labors in getting up the session laws, and that within a very few days, there has come into the office of the Secretary of State, a bill passed by the Legislature last winter, having just received the signature of the Governor. To that system I am opposed, but I am in favor of giving the Governor sufficient opportunity to carefully consider these matters at least to the extent of ten days after the Legislature adjourns; and with that understanding, I shall vote for the

proposition of the gentleman from Steuben [Mr. Rumsey], and hope that if that proposition shall receive the sanction of the committee, it will be amended in the particulars I have suggested.

Mr. VAN CAMPEN—I wish to make a remark in reply to the gentleman from Onondaga [Mr. Alvord] in regard to the provision which requires two-thirds of all the members elected to pass a bill. I myself am unwilling to require that number. I would propose an amendment to that, making it three-fifths instead of two-thirds. That would require eighty-four in the house and twenty in the Senate. My impression is that, in the power given to the Governor the difference which would be made by requiring two-thirds of all the members would be too great—that three-fifths is as much as we ought to require in passing an act over the veto of the Governor.

Mr. CHURCH—How many will three-fifths be?

Mr. VAN CAMPEN—Three-fifths of one hundred and thirty-nine are eighty-four; eighty-four in the House and twenty in the Senate. I am unwilling to vote for this section as a whole; and am willing to vote with the gentleman from Onondaga [Mr. Alvord] in regard to the appropriation and supply bills—that on those bills the Governor shall have power to veto any separate portion of it. And I would also remark that I think the ten days spoken of by the gentleman from Onondaga [Mr. Alvord] is an absolute necessity, and will accomplish all that we require, or nearly all, by closing the action of the Governor on bills on the last day of the session. With that understanding I will vote for the amendment of the gentleman from Steuben [Mr. Rumsey]. If that amendment is adopted, I will move that the number be made three-fifths instead of two-thirds, as the requisite number to pass a bill over the Governor's veto.

THE CHAIRMAN—At this time there are two amendments pending—one to the original section, and one to the amendment of the gentleman from Steuben [Mr. Rumsey].

Mr. FULLER—Before that vote is taken I wish to say a word or two on the subject. I shall vote for the substitute proposed by the gentleman from Steuben [Mr. Rumsey]. If I understand the amendment reported by the standing committee, as it has been amended at the suggestion of the gentleman from Albany [Mr. A. J. Parker], it comes substantially to the same result as the corresponding clause in the present Constitution, so far as the veto is concerned. As the Constitution now stands, when the Governor returns a bill with his veto he assigns his objections. If they go to the whole bill he says so; if they go to a portion of the bill he points out the objectionable parts, and then the Legislature takes action upon it, and if it obtains the requisite majority it is passed into a law, notwithstanding his veto. If it does not obtain the requisite majority it does not become a law, and the Legislature then either lay the subject aside or they take up the different portions of the bill which are not objectionable and pass them into a law—usually making such

amendments as are necessary to be adopted to adjust the disjointed parts to each other, after the objectionable portions are stricken out. And, sir, that is precisely what will be done under the amendment of the standing committee as amended, at the suggestion of the gentleman from Albany [Mr. A. J. Parker]. The Governor will send in his veto to an objectionable portion of a bill; what is the consequence? The whole bill fails to become a law. What next? Why then the amendment of the gentleman from Albany [Mr. A. J. Parker] operates, and the Legislature, when they see fit to do so, but not otherwise, will pass the residue of the bill into a law and send it to the Governor for his signature. It comes precisely to the same result which is reached under the present Constitution, and the only thing you gain by this amendment is that you reach the same result but in a roundabout and awkward manner, instead of doing it in a plain and straightforward way as under the present Constitution. I shall, therefore, vote for the amendment of the gentleman from Steuben [Mr. Rumsey], not because I am in favor of all its provisions, as has been said by other gentlemen, but because I think it altogether better than the proposition of the standing committee as it has been amended in Committee of the Whole. I think it is wise to require a two-thirds majority, or at least a three-fifths majority, of all the members elected to the Legislature to pass a bill over the Governor's veto. I think the amendment of the gentleman from Steuben [Mr. Rumsey] in that regard is therefore very proper. But I think also that the Governor should have time to consider a bill passed on the heel of a session, after the adjournment of the Legislature; we all know that bills are rushed through the Legislature in large numbers on the very heel of a session. That is the experience of every man who has ever been in the Legislature. What is the consequence? Why, sir, the Governor has no time to consider them before the adjournment of the Legislature, and he has then the choice either to reject all those bills or to sign them without consideration; he is reduced to this dilemma, and there is no alternative. I should, therefore, be in favor of giving him an opportunity for proper consideration after their passage. You give him ten days during the session because you think he requires it for the purpose of examining bills before he signs them. Why does he not require it just as much when the Legislature adjourns as before? Why can he not sign a bill while the Legislature is in session without consideration, just as well as he can after the session is over? Then, again, sir, while there may be some doubt as to the correctness of the principle, I shall not object to such an amendment as is proposed by the gentleman from Onondaga [Mr. Alvord] so as to give the Governor a simple negative and nothing more upon bills generally, and a partial negative when determining upon the supply or appropriation bills. I think that that is as far as it would be safe to allow the Governor to interfere affirmatively in matters of legislation.

Mr. A. J. PARKER — The section as reported

by the committee is placed upon the same footing as it is under the general government in regard to the signing of bills. The language of that portion of the Constitution is the same as the provision on that subject in the Constitution of the United States. The practice here sought to be established in this State has always been followed at Washington. There has been no departure from the rule that all the bills shall be signed by the President before the adjournment of Congress. He attends at the capital for that purpose, and they do not adjourn until the bills are all disposed of. If that were practiced here, and there seems to be a pretty good reason for it, if we allow the Governor to veto a portion of a bill, it should be done while the Legislature are together, so that they may immediately decide whether they will pass it over his veto; and if they do not choose to do so, in the case of his vetoing part of a bill, that they may pass the remainder and allow him to give it his signature before the adjournment. If he is allowed to do it after the Legislature adjourns the whole bill will be defeated, without any regard to the will of the Legislature, they having no opportunity of saving the residue of the bill. That is the only reason that I know of, why, it seems to me better to require the bills to be signed before the adjournment than to allow him ten days after the adjournment. Certain it is that there should be a restriction, that the practice which now prevails is exceedingly wrong, and exceedingly inconvenient. With the construction that has been put on our Constitution as it now stands and by which bills may not be signed before the next meeting of the Legislature, it is impossible to know what the laws are. For myself I do not see the propriety of this substitute offered by the gentleman from Steuben [Mr. Rumsey]. It is taking the language of the present Constitution with but one or two changes. If this committee intends to adopt the principle of allowing the Governor to veto a part of a bill, then, it seems to me this substitute should not be adopted. If there be any further modification necessary in the section as reported, of course it can be made.

Mr. WAKEMAN—I do not agree with the gentleman as to the effect of this partial veto. Under the present Constitution where a bill is vetoed they have a right to pass it, of course, over the objection of the Governor, and it becomes a law, but if they do not, it fails to become a law. There is no power to pass the bill, or a portion of it, except by embodying it in a new bill. It has got to go through the regular process of being referred, reported and acted upon precisely as a new bill. In the other case, it becomes a law at once, by being returned to the Governor, engrossed for his signature. We can all see the importance of this, because a very small minority at the close of the session can defeat a bill by objections made under the rules, and it would be quite difficult to pass a meritorious bill that has just been introduced at the close of the session. Therefore, I say, if we would retain the feature of allowing the Executive to veto a portion of a bill, the amendment already adopted does not

really interfere with that. All there is of this amendment is that it allows the Legislature to pass again upon the balance of the bill—to say whether they will retain that or not. If they do not, of course it amounts to a veto of the whole bill. The Governor vetoes a part of it and the Legislature the balance. But in case the Legislature should not repass the bill, or in other words should veto the bill by rejecting it, the portion of the bill approved by the Governor will become a law notwithstanding the action of the Legislature. If the principle of the amendment of the gentleman from Steuben [Mr. Rumsey] should be adopted, it would be all well enough after rejecting the principle of a partial veto. But there seems to be a necessity [I call the attention of the committee to this] of having the bill properly perfected. In case the bill is partially vetoed what shall we do with that bill? How shall it be perfected—I mean in case of an adjournment of the Legislature. Suppose we adopt the principle of the gentleman from Onondaga [Mr. Alvord] and restrict this partial veto to the appropriation and supply bill, and the Executive vetoes a portion of the bill designating what particular portion, how shall that be arranged to become a law? Shall we leave the bill to be perfected before it is sent to the Secretary of State's office or afterward? The difficulty the committee labored under was this: We first considered the propriety of restricting the power of the Governor to sign bills to a certain number of days after the adjournment. We came to the conclusion that twenty days would not be an unreasonable time in view of the vast amount of business usually transacted; but when we came to examine this question—which we thought was an important one—in regard to the vetoing a portion of a bill we were at a loss to know in what shape to leave it after the adjournment of the Legislature, and the only satisfactory conclusion was this: to allow the Executive to sign no bills after the adjournment, and then, while the Legislature was in session the bills with the partial veto could be returned to the Governor re-engrossed with its sections properly arranged and when signed it would become a law while the Legislature was still in session. Now, then, it is said that from the large number of bills it would be utterly impossible for the Governor to review those bills properly. We thought this could be the result of it perhaps, but as we understood the sentiment of this Convention that corporations would be allowed or required to form under general laws—which would take away many bills originally presented to the Legislature, and that we should confer a larger power on the boards of supervisors, by which a larger number of other bills would be taken away from the action of the Legislature, and by increasing the compensation of the members of the Legislature, and not restricting them to a particular number of days—we believed that, in view of the fact that the Executive could not sign bills after the adjournment, the Legislature would conform their business to the action of the Governor, and the action of the Governor to the action of the Legislature, and

the Governor would have time to examine bills that ought to become laws. The committee were not opposed to giving the Governor reasonable time, in view of all the facts, in case we did not adopt this partial veto; but we labored some time, and had a number of sessions on this very identical point—as to what we should do with this partial veto. I conceive it would not be as difficult with the amendment of the gentleman from Onondaga [Mr. Alvord]. I, for one, want to retain the principle advocated by the gentleman from Onondaga [Mr. Alvord]. If we cannot apply this Executive veto to different portions of an entire bill, other than the appropriation and supply bill, I want the next best thing, and which the gentleman from Onondaga [Mr. Alvord] says he is willing to support. It is more important, I concede, in reference to appropriations. When this idea originated it was in reference to the appropriations made by the Legislature. If we cannot have it apply to all bills then I want it applied to appropriations. Shall we then, if we adopt that, allow the Executive to sign bills after the adjournment of the Legislature? Shall we allow the Executive to perfect the bill, or anybody else, after the partial veto? It would look as if there was some act to be done by somebody to perfect the bill and to make it properly a law. And we could see no feasible rule to adopt except to adopt the rule of the Congress of the United States, requiring the Executive to place his signature to bills before the adjournment of the Legislature; and in that way it would be perfectly applied. When objection is made, the bill is returned to the Executive and it is then re-engrossed, with the objectionable part out; and when it goes on file in the Secretary of State's office, it is a perfect bill of itself. But with his bare indorsement, by objecting to certain portions of the bill, it would be a mutilated bill when it was put on file in the Secretary of State's office; and when the laws were published the power could be given to the Secretary of State to correct it, the power could be given to the Governor to correct it, but by the other course the Legislature could see their work finished before they adjourned, and would know that it was right and proper. But we have heard of some laws being passed; and when we have seen them come into the Secretary of State's office, there were some small words left out, or others added, which changed the law very much. This is the way we came to adopt the measure stated in the report. I hope that the friends of the principle of the partial veto of a portion of a bill will stand by that measure; by so doing we shall do away with a great evil in this State. In my judgment, if we stand by this measure, we can, in time, save enough to enlarge the Erie canal. I will stand by the gentleman from Onondaga [Mr. Alvord], so far as his amendment is concerned, if we cannot get the whole.

Mr. BARKER—Before the vote is taken upon the proposition I wish to state a few facts which have been collected for the information of the committee. I shall not make any comments upon them. They bear upon the question of

whether the Governor should have any power to sign the bills after the Legislature adjourns: I give the history of this matter from the year 1861:

Year	Governor.	Date of adjournment.	No. of bills signed to date of adjournment.	No. of bills signed after adjournment.	Total.
1861,	E. D. Morgan,...	April 16	277	63	340
1862,	E. D. Morgan,...	April 22	450	39	489
1863,	H. Seymour,...	April 25	234	281	515
1864,	H. Seymour,...	April 23	346	240	586
1865,	R. E. Fenton,...	April 28	604	173	777
1866,	R. E. Fenton,...	April 20	714	196	910
1867,	R. E. Fenton,...	April 20	480	494	974

This of course does not include all of the bills passed, as the number vetoed or not signed by the Governor are not mentioned. The 974 bills signed by the Governor—the work of the last session of the Legislature—will make, I am told, over 2600 pages of printed matter. It may also be remarked that of this number of acts, full 650 did not reach the executive department until the last ten days of the session of the Legislature; 135 of these were received on the 20th April, the day of adjournment, and about 150 subsequent thereto. Now it seems to me there must be a remedy for this evil, and the Executive must have some time after the Legislature adjourns to consider the numerous bills submitted to him.

The question was put on the amendment of Mr. Rumsey, and it was declared carried, on a division, by a vote of 52 to 30.

Mr. ALVORD—I propose to amend so as to take in both of my propositions; that is, so as to permit a partial veto on appropriation bills and the authorizing the imposing of taxes and also to give the Governor ten days after the adjournment of the Legislature to sign bills.

The SECRETARY read the amendment of Mr. Alvord, as follows:

Strike out all after the word "Governor" in the third line of the section and insert as follows:

"But if not he shall return it with his objections to that house in which it shall have originated, which shall enter the objections at large on its Journal and proceed to reconsider it. If after such reconsideration, two-thirds of all the members elected to that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of all the members elected to that house, it shall become a law notwithstanding the objections of the Governor. But in case the bill is one which appropriates the public money or authorizes the imposition of a tax, and contains separate and distinct provisions, and the Governor shall disapprove of the whole or one or more of said separate and distinct provisions, he shall return the bill to the house in which it originated with his objections to the whole or a portion thus disapproved, which shall enter the objections at large on its Journal and pro-

ceed to reconsider it. If after such reconsideration, either of the entire bill or of a part or parts of said bill objected to, as the case may be, two-thirds of all the members elected to that house shall agree to pass the whole, it shall be sent together with the objections, to the other house by which it shall be reconsidered and if approved by two-thirds of all the members elected to that house, it shall become a law, notwithstanding the objections of the Governor. If either of the two houses shall not thus approve of the part or parts objected to, the bill containing such part or parts as shall be approved by the Governor shall, without unnecessary delay, after the vote is taken on such reconsideration, be engrossed as a separate bill and returned to the Governor for his signature. But in all cases of reconsideration, the votes of both houses shall be determined by ayes and noes, and the names of the members voting for and against the bill, or any part thereof, shall be entered on the Journal of each house respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall become a law in like manner as if he had signed it, unless the Legislature shall by their adjournment, prevent its return in which case it shall not be a law. The right of the Governor to sign bills shall cease ten days after the adjournment of the Legislature."

Mr. C. L. ALLEN—I ask, in the first place the question whether, when this amendment is submitted to a vote the question can be first taken on the part relative to the veto, and then on the time given to the Governor to sign bills. They are separate questions.

The CHAIRMAN—How would the gentleman like to have it divided?

Mr. C. L. ALLEN—I would like to have the question taken first on the first part of the amendment—as to the Governor's right of a partial veto upon bills for the appropriation of money, and in the second place whether ten days after the Legislature adjourns shall be given to the Governor to sign bills. They are entirely distinct propositions.

The CHAIRMAN—The question will be divided. It will be first taken on the proposition as to the partial veto.

Mr. C. L. ALLEN—As the question stands now, I would prefer to have the first part of the proposed amendment of the gentleman from Onondaga [Mr. Alvord] adopted, confining the extension of the partial veto to the appropriation bills. I think that is the next best thing to the section reported by the committee. Then, as regards the other part—the giving of ten days to the Governor after the close of the session of the Legislature in which to sign bills—I still have an objection to the Governor's having any power to sign bills after the adjournment of the Legislature. I think the object should be to prevent this notorious system of corruption—of lobbying—the infesting of the Governor's chamber, which has been the case after adjournment of the Legislature. All that would be shut off by confining the power of signing bills to the legislative session. As I said before

the Legislature can fix the time in which they will send bills to the Governor ten days before the time of adjournment—which would be sufficient time for the Governor to look over and approve or disapprove of any measure coming before him; but let us have the business cease with the adjournment of the Legislature. There has been no difficulty so far as the sessions of Congress are concerned, in confining the power to sign bills to a period before the close of the session. There are many bills there, in comparison with which the bills of our Legislature are as nothing; and yet the President attends on the last day of the session and signs all bills and sends them back with his approval or returns them with his objections. No evil has resulted from this; but, on the contrary, great good has resulted, and, as I contend, great good will result from confining this power to the session of the Legislature. As has been suggested it prevents hasty legislation on the last days of the session, and the running through of bills mill-wright fashion at that time. Therefore while I would be inclined to vote for the first part of the amendment of the gentleman from Onondaga [Mr. Alvord], as the next best thing we can obtain to the proposition of the committee, I would still adhere to the proposition reported by the committee and vote against that part of the amendment giving the Governor power to sign bills after the close of the legislative session.

Mr. EVARTS—I am opposed to both branches of this amendment; but I do not propose to repeat any of the suggestions which I made as to the propriety of giving the Governor a share in active legislation, although it be confined to appropriation bills. I confess I am surprised that any gentleman of the Convention should think it wise to continue legislative power in the Governor for ten days after the rising of the Legislature. In my own opinion, the construction of the constitutional provision which has permitted this power in the Governor to be exercised after the rising of the Legislature, was unsound. And we have, in the report of the committee, a clear appreciation of the evils of this executive legislation, both in itself and in its inducement of carelessness and procrastination in the true legislative function. We now are told that this shall be allowed for ten days. Gentlemen of the Convention must understand that, in respect of that ten days, the function of the Executive is entirely different from what it is during the session of the Legislature. We have always withheld from the Executive an absolute veto. We have limited his power to saying whether a bill shall become a law as it first passes the Legislature or not, and if not, to recall the legislative authority to that question. But gentlemen will see that in regard to all laws left to the Executive to determine, whether he will approve them or not, for ten days after the rising of the Legislature, he has an absolute veto or an absolute concurrence. He is left for that ten days—neither branch of the Legislature being in session—with absolute authority to say whether the law shall go into operation or not. I conceive that nothing can be

worse in theory, sir, that nothing can be worse in practice, and that all the combinations which urged the passage or the defeat of laws would attend upon the Governor during those ten days of his supreme legislative authority. Besides, sir, if we wish to discourage, as in itself an evil, this gravitation of all measures to the end of the session—this shirking of responsibility on the part of the Legislature—how can we do it better than by requiring the Legislature to know that by their postponement of their legislation on any questions, and by their adjournment with bills in the hands of the Governor, they thus take the responsibility before the people whether laws shall be passed or defeated; and what holds them better to their true vigilance—as in my judgment they are and always should be the sole depositaries of the law-making power of this State—than the requirement that, when they send into the chamber of the Executive their completed legislation, they themselves shall await his determination, in order that they may exercise their legislative authority against his veto?

Mr. CHURCH—I hope the whole of this amendment will be voted down. The gentleman from New York [Mr. Evarts], has given a conclusive answer, it seems to me, to the latter part of it. The first part of this amendment, as I understand it, authorizes the Governor to interpose his veto to a portion of a bill passed by the Legislature, when it is returned to either house, and if the part vetoed does not receive the votes of two-thirds of all the members elected to the house, that portion of the bill fails. It is then to be engrossed and returned to the Governor, without any other action of either house of the Legislature. The result of that is, that a bill becomes a law without ever having been passed by the Legislature. The bill which they passed does not, but another bill which they have never passed upon at all does become a law. No more vicious principle could be introduced into the Constitution of this State.

Mr. COMSTOCK—I will also oppose the amendment of my colleague from Onondaga [Mr. Alvord]. I will say a word or two with respect to the last branch of it. This practice of signing bills after the adjournment of a legislative body is a dangerous exercise of authority. A case arose in the courts some seven or eight years ago, in regard to a bill which had been signed by the Governor sometime after the adjournment of the Legislature. In the consideration of that case, it appeared that there were a large number of bills which had been signed in that way—some of which had gone into effect as laws; and it was supposed that great public mischiefs might arise from the decision of the court, adversely to that practice. Under the pressure of these circumstances, the court decided that the Governor had power to sign bills after the adjournment of the Legislature; but it always appeared to me, with the very greatest deference to that court, that that was an erroneous decision. The language of the Constitution in this respect is precisely like the language of the Constitution of the United States on that subject. Now, it has

never been the practice of the President of the United States to sign bills after the adjournment of Congress. No such case was ever known, except, I believe, in one instance, and that was afterward reported upon and disregarded as a law. The practice is of recent growth in this State and it is under a clause of the Constitution in the same words as those used in the Constitution of the United States and which practice is sanctioned by the decision as I have stated. And now, sir, as to the merits of this proposition. Every one knows that laws are sometimes sent to the Governor which contain both good and bad features. There are some things in them to approve, and other things in them which ought to be rejected. In a case of that kind, the Governor examines the bill, and he finds a section or clause in it to which he cannot give his approval although would approve the rest of it; and he returns the bill to the Legislature with his objections. The Legislature, being in session, reconsiders the subject erases the obnoxious clause, and passes the rest of the bill, and thus modified it goes to the Governor, and is approved. But that thing cannot be done when the Governor is brought to the consideration of a law after the adjournment of the Legislature. He cannot return a bill to the Legislature, and ask them to strike out the obnoxious clause; and therefore he is under a powerful temptation to sign the whole bill, embracing the bad as well as the meritorious part. It is a great temptation to the Executive to depart from the strict line of his executive duty, so far as that duty is involved in the enactment of laws. It seems to me that this amendment should not be adopted.

Mr. OPDYKE—I am in favor of the latter clause of the amendment of the gentleman from Onondaga [Mr. Alvord]. I think it would be useful to give the Governor ten days time after the adjournment of the Legislature to examine deliberately and carefully, before deciding upon the propriety of signing or withholding his signature from the laws which always crowd upon him toward the close of the session of the Legislature. The most important objections that have been urged, I believe, are those that have been urged by the gentleman from New York [Mr. Evans], declaring that it confers upon the Governor legislative powers. I think he states the case too strongly. The Governor has no absolute legislative power in any case. All he can do is to decide whether he will clothe with the sanction of his authority the bills passed by the Legislature. He has no power to originate bills himself; he can only approve or disapprove the bills presented to him. The ten days time is very essential, as all experience has proved, if we desire to avail ourselves of the advantages of Executive revision. The only objection, as it appears to me, against the provision is in the fact that it gives the Executive power during those ten days, to determine whether a bill which had passed the Legislature shall become a law or not—and if we should unfortunately have an unfaithful Executive, subject to improper influences, there might be danger in that. This is the only objection that occurs to me. I think

from the experience of the past we have no reason to apprehend any difficulty upon that point; and if not, the scenes that have been witnessed at Washington admonish us that there is no prescriptive wisdom in the policy that is pursued there. The President needs time to determine whether it would be proper or improper to affix his signature to the bills which have passed Congress. The practice which has grown up in this State under a provision similar to that in the Constitution of the United States, I consider still more objectionable. I agree with the gentleman who has last spoken [Mr. Comstock], that the decision of the court to which he alluded is very extraordinary in view of the contrary practice which has so long prevailed under the same provision in the Constitution of the United States. In regard to the other portion of the gentleman's [Mr. Alvord] proposition, I am not free from doubt; I think there are objections to giving the Executive the power of a negative over a portion of even an appropriation or a supply bill; but on the other hand I think the advantages, on the whole, outweigh them, I shall therefore be inclined to favor the proposition. But I should like to ask the gentleman [Mr. Alvord], whether he has so framed the provision in regard to the supply bills and bills authorizing taxation (which I heard rather indistinctly), as to include the tax levy of the city of New York, which I believe is the only tax levy of a local character that requires the sanction of the Legislature.

Mr. ALVORD— I had that in view in drawing it, and I think there cannot be any question in regard to it.

Mr. OPDYKE— It is very important that it should be included, and I think it will be of great value.

Mr. SMITH— The gentleman from New York [Mr. Opdyke], who has just taken his seat, is, I believe, at the head of the committee known as the Committee on Corruption. It has been a matter of much interest to me, during the discussions on the various matters that have come up before this body, in what way that committee were to apply the remedy that is needed to correct existing evils, and to prevent corruption. Measure after measure passes this body, and no provisions are incorporated for the correction of these evils; and if we proceed through and terminate our labors without incorporating in the Constitution any provisions of a remedial character, in what manner is this Committee on Corruption to effect the object in view? Do they propose to take the body politic in hand and give it a dose of physic? It seems to me it would be wise for us, if possible, to provide remedies for evils that exist, as we pass along, and incorporate them into the various articles of the Constitution. If I am not mistaken, one of the greatest evils complained of by the people is corrupt, crude and improvident legislation. This is caused in part, at least, by postponing important measures, until the close, or near the close of the session of the Legislature, and then hastily passing them through without due consideration. Measures are often rushed through of which many members know nothing,

or comparatively nothing. If I understand this provision recommended by the committee, the object of it is to prevent this evil, and to compel the maturing of measures at an earlier period of the session. It is obvious that this change would tend to ventilate and defeat corrupt schemes, and prevent hasty and inconsiderate legislation. Now, postponing measures to the close of the session, and allowing the Governor to sign bills after the adjournment of the Legislature, invites this very evil that is complained of. It seems to me to encourage delay, and to furnish facilities for designing men to rush measures through which would not bear examination and discussion. Would it not be wise, therefore, for us to adopt a measure that will tend to prevent this evil? We may consider ourselves, while in Committee of the Whole, a Committee on Corruption, and endeavor to remedy existing evils as we pass along. I am in favor of the measure recommended by the committee.

Mr. E. BROOKS—I wish to make a simple remark on the proposition now under consideration, that is, that the committee should not draw any parallel between the legislation of the State of New York and that of the Congress of the United States in disposing of a subject of so much importance as this. Everybody who has observed the closing proceedings of a session of Congress, knows that although bills submitted in the last hours of a session are very important in their character, they are very few in number, and confined mainly to the important appropriation bills, such as relate to the army and navy, and measures of that character, whereas the Governor of a State finds upon the last day of the session, as we saw in the Legislature of 1867, some six or seven hundred bills placed before him within the ten days before the adjournment of the Legislature, and one hundred and thirty-five bills placed before him for his signature on the very day that the Legislature adjourned. It is physically impossible for any man, even though he had the hundred eyes of Argus himself, to observe and read these one hundred and thirty-five bills. Therefore it is unjust to impose a duty which, as I have said, it is physically impossible to perform. It is as much as he can do under any circumstances, labor as hard as he may, to examine and consider and sign bills which may be presented to him within the ten days after the Legislature has adjourned. I can conceive very well that there are disadvantages in conduct like that suggested by the gentleman from New York on my right [Mr. Evarts] and the gentleman from Orleans [Mr. Church], but I cannot believe that this action, this power, if we may so express it of the Governor's, is a legislative power. He has no more power after the Legislature adjourns in that respect than he had before, except that when the Legislature is in session, he may return the bill which he disapproves to the Legislature for reconsideration. But the power of examination and the power of approval is as much with him whether the Legislature be in session or not. I hope this Convention will considerably abridge the growing legislation of this great State; but I think, in justice to the

Executive, and the great duties imposed upon him in the examination of the large number of bills submitted to his consideration, that it is but a fair proposition to allow him the ten days which has been suggested in the last branch of the amendment now pending. At the same time, upon reflection, I would be very unwilling to give the Governor power to approve certain items of a bill. There is this distinction between the first and second propositions: In the first instance, the Legislature is in session; and if the Governor disapproves of part of the bill he can set forth his reasons in a message which he submits to the Legislature, and the Legislature can sit in judgment on those opinions whatever they may be. That, it seems to me is giving too much power to the Governor, and giving him an influence which, when the Legislature is in session, he ought not to exercise. I shall, therefore, with great pleasure vote for the last branch of the amendment of the gentleman from Onondaga [Mr. Alvord] at the same time expressing the hope that the first part will not be adopted.

Mr. FOLGER—The reasons against the first part of the amendment have been undoubtedly sufficiently expressed—to my mind they are conclusive. But it does seem to me that due consideration has not been given to the last part of the amendment. I think there is irresistible force in the argument of the gentleman from Fulton [Mr. Smith] against adopting any such proposition. There is scarcely a delegate who has spoken on this floor who has not directly or indirectly mentioned the evil practices of legislation. Our minds have been very much occupied in devising some manner in which they may be repressed. You cannot repress them by positive enactment by saying that they shall not be. You can only reach them indirectly by the operation of causes which shall of themselves act upon legislation. It seems to me that here is one of the causes which will tend to diminish a great evil, the practice which gives opportunity for the perpetration of most mischievous acts in the last week of the session in the passage of bills. The gentleman from Washington [Mr. Hitchcock] says that on the 19th day of April the yeas and nays were called on this floor one hundred and forty-one times on bills, thus showing how great a number were lost or passed. Most of them were passed. I suppose they could not have been properly considered. Undoubtedly those bills were sought for by somebody. They were brought here and urged. It was thought to be an object by some one to get them into law. If you erect a barrier beyond which opportunity shall not exist for the passage of bills, an effort will then be made to have them passed before the latter end of the session. What is the custom of the Legislature? It is very much the custom of this Convention—to dally and loiter and waste the first part of their hundred days, and in the last month, all in a hurry, to press measures through. There never has been a time when a just measure would not receive due deliberation, and if proper for passage, be passed in the first month of the

legislative session. It is the wrong measures which seek to hide themselves in the confusion of the multitude which come in at the end. They avoid the deliberation of the first part of the session. I conceive that by this provision, if adopted (that the Governor's sanction to a bill must be received before the adjournment of the Legislature), we will put a stop to this mode of legislating. Then, the effort will be, not to delay, but to hurry forward; then the effort will be, not to adjourn on Friday until Monday, but to keep the Legislature in session; then, the effort will be, to pass early all bills so that they may go early to the Executive chamber, and receive the approval of the Governor or his veto and be sent back so that they may be reconsidered and adopted if the Legislature is of that mind before the adjournment. I pray, gentlemen, therefore, not to add to, but to lessen the present evil custom, and if possible to prevent entirely the crowding of legislation into the last days of the session.

Mr. VAN COTT—We have three alternatives presented to us with reference to this part of the Constitution, either to say that the Executive shall have no part in the passage of laws, or to provide that he shall consider these laws after the adjournment of the Legislature, or to make provision that the laws submitted to him shall be submitted in season for his consideration before the adjournment of the Legislature. The evil of procrastination by the Legislature, illustrated by our own experience here, has been pointed out in the forcible argument of the gentleman from Ontario [Mr. Folger]. It is a very great evil. Much of the session is wasted in idleness, much in mere frivolous measures, and in frivolous discussions. But when the Legislature approaches the close of its session then the wheels fly with such rapidity that you can hardly distinguish objects. The way to prevent that is to require a prompter consideration of measures in the Legislature, and prompter submission of those measures to the judgment of the Executive. It seems to me the difficulty may be obviated by a provision of this kind, that no bill shall become a law without the signature of the Governor, unless it shall have been presented to him at least ten days before the adjournment of the Legislature, or unless it shall have been passed over his objections as herein provided. When the proper time comes I will offer that amendment.

Mr. RATHBUN—I agree with the gentleman from Ontario [Mr. Folger] in his view of this amendment. I believe it is one of the reform measures which the Convention is called upon to adopt, to hold that the legislation of the State of New York shall close entirely when the Legislature adjourns. I do not believe if we regard the progress made by the Convention thus far, and look beyond to what is probable, we shall fail to see that the amount of legislation hereafter will be less than half of what it has been heretofore. Now from the recollection I have of it, having had no time to look at any memorandum to refresh my memory, I find that from the action of the Convention, the Constitution

as thus far settled, withdraws from the Legislature altogether all power of incorporating companies by special acts, and we have been told that a very large portion of the legislation of last year was of that character. We have, by the decision of the Convention, taken from the jurisdiction of the Legislature a large amount of business that pertains to counties and towns, and given it to the boards of supervisors. That, we have been told, has amounted to a very large portion of the legislation within the last few years. We have, in addition to that, adopted a provision in the Constitution which will settle to a large extent, the legislation in regard to the consolidation of railroads. That is out of the way. There will soon be reports submitted on the subject of whether donations shall be made to private institutions, and the sentiment of the Convention seems to be in favor of doing away with that practice. With these subjects withdrawn from the field of legislation, it leaves a clean field so far as these large jobs are concerned. I believe that this Convention is prepared to adopt provisions in the Constitution by which the Legislature shall be prohibited from giving away the public money as charities or bonuses to individuals, corporations, associations and various other claimants that have been heretofore hanging about the Legislature and waiting for their slice of the public property. In addition to that I presume the Convention are prepared and intend to adopt a clause which will provide for withdrawing from the Legislature altogether all power in regard to private claims—that the Legislature, composed of one hundred and thirty-nine members in the Assembly, and of thirty-two in the Senate shall not be engaged in auditing the accounts of people who travel up and down the low-path of the canals, looking for some claim lodged along the banks somewhere that can be picked up and brought here and money made out of it. That class of cases, I understand, is to be taken away from the Legislature and to be confided elsewhere—where, perhaps, the law will prevail, and when such a thing as equity and justice may be occasionally heard of. When we get through with these (and these are only a part), and we find so much taken away from the Legislature, then, I submit, it is not asking too much, to say that when the Legislature closes their labors and leave the capitol, and business cases, the Governor shall not be left to be teased and worried for ten days by applicants who desire to have him consummate the job that may have been purchased through and he alone left to be operated upon. Now, I am not afraid that the Governor can be bought or influenced or anything of that kind. But the plain, simple, honest rule is for us to guard against all these things where it can be done reasonably and properly. It is better to do it than it is to condemn or find fault after an act of that kind has been done, when the Convention has been so unwise, having the power, to leave it unprovided against, and thus protect the people in their rights.

The question was put on the first part of the

amendment of Mr. Alvord, providing for a partial veto of appropriation bills, bills authorizing the imposition of a tax and bills containing separate and distinct provisions, etc., and it was declared lost, on a division, by a vote of 30 to 56.

The question was then announced on the second proposition of the amendment of Mr. Alvord, as follows:

"The right of the Governor to sign bills shall cease ten days after the adjournment of the Legislature."

Mr. VAN COTT—I move the following amendment.

Add to the section these words:

"No bill shall become a law unless it shall have been presented to the Governor at least ten days (Sundays excepted) before the adjournment of the Legislature, or signed by him before the adjournment, or unless it shall have been passed over his objection, as herein provided."

Mr. EVARTS—I understand that the amendment is the same as that of the gentleman from Steuben [Mr. Rumsey].

SEVERAL DELEGATES—No.

Mr. COMSTOCK—That leaves a hiatus in which the Legislature have nothing to do.

Mr. EVARTS—As I understand the amendment of the gentleman from Kings [Mr. Van Cott], no bill can become a law unless sent to the Governor ten days before the adjournment, or unless he has signed it, or unless it has been sent back, and repassed by the Legislature.

Mr. RUMSEY—As I understand it it would prevent the Legislature from passing any law during the last ten days of the session, as it could not be signed by the Governor if it was passed during that time.

Mr. BELL—It occurs to me that the amendment of the gentleman from Kings [Mr. Van Cott] is a very objectionable one. It will necessarily compel the Legislature to sit ten days after they have completed their labors. It should not be entertained. It is nearly as objectionable as the amendment now pending of the gentleman from Onondaga [Mr. Alvord] allowing the Governor ten days after the Legislature shall have adjourned to sign bills. If any provision admits of corrupt practices it is this proposition of Mr. Alvord. It is a dangerous power or privilege to give any Governor. We should not leave the Governor exposed to the temptations he would be under with this provision. And then, again, it is not necessary. Under the provisions of the Constitution as we have adopted it thus far, if I understand our action aright, we have not limited the sessions of the Legislature, and consequently there will be no such accumulation of bills at any one time as there has been for the last days of previous sessions of the Legislature. Much of the legislation has been suffered to lie along until nearly the last, particularly the objectionable portion of it, that it might be rushed through in the hurry of the last days of the session of the Legislature. Now, by removing the limit of the duration of the session, it is presumed that these bills will come along in their regular order, and be considered and passed, or

rejected, so that on the last week or last days of the session there will be no more bills before the Governor than there has been during the earlier part of the session. Therefore the proposition of the gentleman [Mr. Van Cott] is not as necessary, as it would have been if the Legislature was limited in the number of days of its session. I hope neither of these amendments will be adopted, but that the provision will remain as left by the amendment of Mr. Rumsey, which we have adopted.

Mr. TILDEN—I believe that until a very late period, the practice of government was perfectly settled that no bill could become a law unless signed by the Governor before the adjournment of the Legislature. Certainly, nothing could be more liable to abuse than the practice of signing bills at an unlimited period after the legislative session has terminated. I do not at all concur with gentlemen who expect to diminish the business to be done at the legislative session to be held hereafter. That is to say, I think that in a population as numerous and having as various interests as the people of this State have, it will appear in practice that there will be new sources of business opening as fast as we can dispose of any now existing, by any provisions in the Constitution which have been adopted or can be adopted. I think, therefore, it will prove that the sessions of the Legislature and the duties of the Governor will continue to be hereafter at least as laborious as they ever have been heretofore, probably more so. Undoubtedly it would be a great improvement to restrict the period during which the Governor shall be allowed to sign bills, if he be allowed to sign them at all after the close of the session, to ten days. Undoubtedly it will be wise to strike out from the Constitution the limitation of the legislative session to one hundred days. I thought so in 1846, and voted against the provision making that limitation. The question is whether we shall allow a period of ten days or whether we shall confine the Governor to the legislative session for such action as he may be compelled to give to the measures that have been passed through the two houses. This is a question in which I do not feel a very strong interest. I came here strongly and anxiously disposed to limit the discretion which now exists. I do not think any great harm would arise from allowing ten days, and at the same time I would not be very much inclined to dissent from the action of the Convention if it limits absolutely the power of the Governor to the period when legislative bodies shall be in actual session. The extension of this power ten days beyond that time is the extension, however, of a power not to reject a bill, but of a power to save it from rejection, for the bill fails, as a matter of course, under the construction of the law, and under the provision now proposed, unless the authority of the Governor to sign it is extended to that period of ten days. I think I shall, on the whole, rather prefer to give the period of ten days, but I am decidedly in favor of the restriction to that period, or an absolute restriction to the period during which the Legislature shall be in actual session.

Mr. HUTCHINS—This question is un-

doubtedly one of great difficulty, and, perhaps, as serious a one as can be presented to this committee for its consideration. The case which has been referred to by two distinguished gentlemen who have already addressed the committee, came before the court in an instance where the power had been exercised by a Governor after it had been frequently exercised previous to that time, and, of course, the effect of an adverse decision upon any laws which were standing upon the statute book, would have been, to have blotted them out. But, if I recollect aright, in that case the principle there decided went no further than to decide that a law which had been signed by the Governor within ten days after it had been presented to him, should become a law. The instance, if I am not mistaken, was one in which the bill had been signed within ten days after the law had been placed in the Governor's hands for his consideration, and the court went no further than to hold in that particular case that the Governor had the right to sign the bill, there being no prohibitory clause in the Constitution preventing it, and it being the spirit and intent of the Constitution that the Governor should have ten days within which to consider a bill, and that the provision of ten days would not have been inserted in the Constitution except to have given the Governor this time for consideration. Now, the trouble in my mind is this—and still I shall vote against giving this ten days' time to the Governor; still, that which has been in the past will be in the future. Previous to 1846 the examination of the session laws of this State will show the fact that the business of the session was crowded into the last two or three days; that nearly all the bills of the session were passed on those days. That was previous to the Constitution of 1846, when the Legislature was not limited to a one hundred days' session and when at times it was extended into the months of May and June. Still this disposition to procrastinate extended and delay prevailed in those days as well as at the present time, and it will continue to prevail in all time to come. And we shall find in the future as it has been in the past, that the hour of adjournment will find many bills on the Governor's table unsigned if we refuse to adopt the amendment proposed by the gentleman from Onondaga [Mr. Alvord]. There is sanction for this, also, which ought to be stated in justice to those who support this amendment. By the provision of the Constitution of 1777 bills were presented to the Council of Revision for their consideration. Those that were passed just previous to the time of the adjournment were presented to them. They were held by them for consideration during vacation and they became laws unless they were returned by the Council of Revision to the next Legislature at the opening thereof with their objections. So that from 1777 down to the Constitution of 1821, about six thousand bills were passed, if I recollect aright, and most of them were considered by the Council of Revision after the adjournment of the Legislature. I mention this as showing that it was not considered when the Governor was substituted in place of the Council of Revision, that he was to be a part of the

legislative power, but that he was to be a check upon hasty legislation, and it was thus not deemed unwise in the early days of our government, that this power should be exercised during vacation or recess of the Legislature. By the provision of the Constitution of Pennsylvania the Governor has the whole period between the adjournment and the session of the next Legislature within which to consider and decide whether he will give his signature to a bill, and it becomes a law, if it is in his hands at the time of the adjournment of the Legislature, unless he returns it to the Legislature within three days after the session with his objections thereto. So, if I recollect right, by the Constitution of the State of Michigan, the Governor has the right to approve a law within five days after the adjournment, if the bill is in his hands at the time of the adjournment of the Legislature, and in such case he has only to return the bill to the Secretary of State's office with his approval. So that the practice has not been all one way, as has been supposed. But, Mr. Chairman, the trouble is this: I have seen the evil of allowing these bills to be signed after the adjournment of the Legislature in its effect upon legislation in this State, that bills are crowded into the latter end of the session, many more in number than would be if the Governor was compelled to take action before the adjournment, and I say it is a strain upon the Executive which no Governor of this State can stand, to have this thing continued longer. I have seen enough to satisfy me within the last six months that the purest and most upright-minded man in this State cannot stand the strain upon him, as Executive of this State if he be intrusted with this power. I know the insinuations that will be thrown out, the charges that will be made against him as Governor, having these bills in hand, if he approve them or does not approve of them, after the adjournment of the Legislature. If it is a bill affecting a large moneyed corporation and which the people believe a large amount of money has been spent on to procure its passage, it does not require a large stretch of imagination to believe that some inducement may affect the friends of the Governor, who may influence his decision in giving his sanction or withholding his approval of that bill; and it is for these reasons, although I think there are many very cogent reasons why why these ten days should be allowed to the Governor, that taking all things into consideration, I think we will do wisely and do well to advance pure and upright legislation, prevent corruption and satisfy the demands of the people, by restraining the Governor in this particular. Some good bills may fail but more bad bills will fail to become laws. At any rate, where there were measures of importance pending the Legislature would stay here long enough to give the Governor time to examine them, so that they might be approved. I think the effect of giving the time proposed by the amendment, is to promote hasty legislation, and for this reason I shall not sustain the amendment.

Mr. GRAVES—If the object of this amendment is to require all bills to be signed during the session of the Legislature, why is it necessary that the bills should be presented to the Governor

ten days before the close of the session? If a provision is incorporated in the Constitution requiring all bills to be signed before the close of the session, then the Legislature will conform to the provision in the Constitution, and make its enactments so that bills can be presented to the Governor before the close of the session, without embarrassing him with a great number of bills. In my judgment, "ten days" should be crossed out of this amendment, and the bills should be allowed to be presented to the Governor up to the last days of the session.

Mr. RUMSEY—I imagine, under the provisions of the substitute which I offered, that no Legislature will put off its business until the last days of its session. They will understand that bills are to be passed, and presented to and signed by the Governor, else they will not become a law; and they will not be content to leave to the close of the session a very large amount of bills to pass into the Governor's hands, which cannot, under the provisions of that substitute, become a law after the adjournment. Now, as I understand the proposition of the gentleman from Kings [Mr. Van Cott], it does not vary at all this substitute that I have proposed. It is simply this, that all bills must be presented to him at least ten days before the close of the session, or they must be signed by him before the close of the session, so that under that alternative "or" bills may be presented to him at any time before the close of the session, and if he signs them it is all right, otherwise not. It is substantially the same proposition I have submitted, but in other words.

The question was put on the amendment of Mr. Van Cott, and it was declared lost.

Mr. BICKFORD—I offer this amendment.

Add at the end of the section the following:

"The Legislature shall not adjourn while bills remain to be acted upon by the Governor."

Mr. BICKFORD—The effect of the amendment I have offered would be not to require a session of ten days of inactivity, but, if the bills are all acted upon by the Governor, they can adjourn, although there may be bills passed the same day, and approved by the Governor, then the Legislature would be ready to adjourn instead of requiring ten days, as proposed by the amendment of the gentleman from Kings [Mr. Van Cott], which has just been voted upon. This obviates the objection that was made to his amendment, that it required a session of ten days of inactivity. This might not require a single day, but certainly the Governor should have time to look over the bills and know what he is signing. Bills should not be hurried upon him the last day. This makes room for an accommodation between the Governor and Legislature, and they could get along with it very well.

Mr. VAN COTT—I wish to state that the gentleman [Mr. Bickford] does not understand my amendment. It was that a bill would not become a law unless presented to the Governor ten days before the adjournment, or unless he signed it previous to the adjournment. It might be presented five minutes before the adjournment, be signed and become a law. If the gentleman did not understand it, that is not my fault.

Mr. BICKFORD—If the amendment of the

gentleman from Kings [Mr. Van Cott] was as he states it, I will withdraw my amendment, as it has already in substance been voted down.

The question was again announced on the second proposition of the amendment of Mr. Alvord, as follows:

"The right of the Governor to sign bills shall cease ten days after the adjournment of the Legislature."

The question was then put on the second proposition of the amendment of Mr. Alvord, and it was declared lost.

The question was then announced on the section, as amended by the substitute of Mr. Rumsey.

Mr. MAGEE—I discover, I think, an error in the amendment of my friend from Steuben [Mr. Rumsey]. If I have heard it rightly, it prohibits a bill from becoming a law which shall not have been signed within ten days of the adjournment of the Legislature by the Governor. Suppose the Governor is sick; suppose he is incapacitated to perform that duty; suppose the bill is a meritorious one and ought to pass—by the strict reading of that amendment, as I understand it, the law fails. I suggest to my friend that that be corrected.

Mr. ALVORD—The Lieutenant-Governor would act if the Governor was sick.

Mr. CHURCH—The same rule would prevail that prevails now. If the Governor is out of the State, and the Lieutenant-Governor goes to Europe, in the absence of both the Governor and Lieutenant-Governor, then the President of the Senate [Mr. Folger] is the Governor of the State, as he is at this time.

Mr. MAGEE—Perhaps I am mistaken.

The question was then put on the section as amended by the adoption of the substitute of Mr. Rumsey, and it was declared carried.

Mr. LARREMORE—I desire to offer an amendment, which should properly come in after the third section of the article; I was temporarily absent at the time that section was under consideration.

The SECRETARY proceeded to read the amendment as follows:

Amend section 3 by adding at the end thereof:

"Neither the Governor nor Lieutenant-Governor shall hold any other office during the term for which he shall have been elected, except as hereinafter provided."

The question was then put on the amendment of Mr. Larremore, and it was declared lost.

Mr. OPDYKE—I offer an amendment to section 4.

The SECRETARY proceeded to read the amendment as follows:

Amend section 4 by inserting in the fourth line, after the word "occasion," as follows:

"He shall nominate and, with the consent of the Senate, appoint all officers of the State, civil and military, whose appointments are not herein provided for; but the Legislature may by law vest the appointment of such inferior officers as it may think proper in the Governor alone, in the courts of law, or in the heads of departments."

Mr. OPDYKE—Section four of this article is intended to define the powers and duties of the

Executive. This portion of his power seems to have been omitted, as it is omitted in the present Constitution. The amendment is copied from the Constitution of the United States, with such alterations as is adapted to meet the exigencies required in this State. It seems to me that while we are defining the powers and duties of the Executive, we should make no such omission as this. Besides, unless this clause be inserted, it will follow that every law creating an executive officer will have to declare by whom he shall be appointed. It would save that repetition and would make the article more complete, more symmetrical; and while I can see no objection whatever to inserting it, I can see a very great objection against leaving it out, because it leaves the definition of the powers and duties of the Governor incomplete.

Mr. RATHBUN—Those matters have been and ought to be, I apprehend, provided by law. It is a matter of legislation. Where offices are created, and the tenure of office or mode of appointment is not provided for, it is a matter for the Legislature to determine in what manner they shall be elected or appointed; and the Constitution provides that the Legislature shall do that, precisely. Now, sir, we have had, to-day, a report from the Committee on the Militia, in which they provide for the appointment of certain grades of officers, including the entire body; and a part of them are to be appointed by the Governor and Senate, and a part elected by the military body, as designated in that report. I hope, therefore, that this amendment will not be adopted, because it is already provided for, and it is incorporating legislation in point of fact into the Constitution itself.

The question was put on the amendment of **Mr. Opdyke**, and it was declared lost.

Mr. AXTELL—I move that the committee do now rise, report the article to the Convention, and recommend its passage.

The question was then put on the motion of **Mr. Axtell**, and it was declared carried.

Whereupon the committee rose, and the **PRESIDENT** resumed the chair in Convention.

Mr. KERNAN, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Governor and Lieutenant-Governor, their Election, Tenure of Office, etc., had gone through with the same, had made sundry amendments thereto, and had directed its Chairman to report the article to the Convention, and recommend its passage.

Mr. GREELEY—I move the previous question on the passage of the article.

The question was put on the motion to order the previous question, and it was declared carried.

The question was then put on the adoption of the article as reported by the Committee of the Whole, and it was declared carried.

The PRESIDENT—The article will be referred to the select Committee of Revision.

Mr. LOEW—I move that the Convention do now adjourn.

The question was then put on the motion of **Mr. Loew**, and it was declared carried.

So the Convention adjourned.

THURSDAY, August 22, 1867.

The Convention met at 10 o'clock.

Prayer was offered by **Rev. E. SELKIRK**.

The Journal of yesterday was read by the **SECRETARY** and approved.

Mr. SMITH—I ask leave of absence for **Mr. L. W. Russell** for to-day and to-morrow. He was called away by sickness.

No objection being made, leave was granted.

Mr. MONELL—I ask leave of absence for myself to-morrow and next week.

No objection being made, leave was granted.

Mr. HALE—I ask leave of absence for **Mr. Carpenter** until Tuesday morning.

No objection being made, leave was granted.

Mr. FULLER—I ask leave of absence for **Mr. Case** indefinitely. He is confined to his bed by sickness.

Mr. GREELEY—I hope not. I object to indefinite leave of absence. It better be made for a week. I move to reduce the time to a week, and if necessary he can have another leave of absence.

Mr. FULLER—I consent to a week.

No further objection being made, leave was granted.

Mr. C. L. ALLEN—I ask leave of absence for **Mr. Williams** for Monday next.

No objection being made, leave was granted.

The PRESIDENT—The Chair desires leave of absence until Wednesday noon from to-day, and no objection being heard, it will take it.

Mr. E. A. BROWN—I regret to be under the necessity of being absent until Tuesday next, and therefore ask leave of absence until Wednesday morning.

No objection being made, leave was granted.

Mr. EDDY—I desire leave of absence for to-morrow.

No objection being made, leave was granted.

Mr. SEAVER—I desire to ask leave of absence for myself for this evening, to-morrow, and until Tuesday morning.

No objection being made, leave was granted.

Mr. PROSSER—I ask leave of absence for myself until Tuesday morning next.

No objection being made, leave was granted.

Mr. SILVESTER—I would like to ask leave of absence from the session of to-morrow until Tuesday next at twelve o'clock.

No objection being made, leave was granted.

Mr. S. TOWNSEND presented the petition of **Edwin Baker** and others upon the subject of assessments.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. E. A. BROWN presented the petition of **William Bowen** and others upon the subject of securing the rights of labor and on taxation.

Which was referred to the Committee on Industrial Interests of the State.

Mr. COLAHAN—I offer a resolution.

The SECRETARY proceeded to read the resolution, as follows:

WHEREAS, A complete system of education and instruction is indispensably essential to all applicants for admission to practice medicine in this State; and,

WHEREAS, At the present time the profession

of medicine is suffering in repute, position, and ability, owing to the loose manner in which licenses to practice are granted, and to the few qualifications that are considered pre-requisites to the granting of diplomas by the several institutions vested with such power; and

WHEREAS, Influence, political and social, often affects the distribution of diplomas, to the ignoring and disappreciation of character and ability; and

WHEREAS, Under the present system graduates, or more properly termed *vendees*, from such notably inefficient institutions as that of Castleton, Vermont (on the payment of fifty dollars, and with hardly time enough spent for an apology for study) can practice medicine in our State without further qualification—and for the reason of the great injuries resulting to the people at large from these causes, and of the increasing want of some protection and safeguard to the profession of medicine, and to the public,

Resolved, That two boards of examiners be created, to consist each of five members—five to be selected from the most reputable practitioners or professors in allopathy, and five from the practitioners or professors in homeopathy. The members of said boards to be nominated by the Governor and confirmed by the Senate. The Legislature to determine the compensation and term of office of such members, and also the times of each year when examination of candidates shall take place. That in the future no person be permitted to practice medicine in this State who shall not have passed a satisfactory examination before either of said boards so created.

The resolution giving rise to debate, was laid over under the rule.

Mr. SHERMAN—I call for the consideration of a resolution heretofore offered by me relating to the time of meeting on Mondays.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That, until otherwise ordered, the hour of meeting of the Convention on Mondays shall be seven o'clock P. M.

Mr. GREELEY—I hope not. If we are to have no meeting on Monday, let us say so honestly and make it 10 o'clock on Tuesday. I always come up here on Mondays, and we have never been able to accomplish anything. If we are to allow part of the members to go away, and have no quorum on Monday evening, why let us say Tuesday morning. I should prefer to meet one week on Tuesday and on the alternate week to have a full session on Monday.

Mr. SHERMAN—All attempts heretofore to have our meetings on Monday morning have proved failures, and I think it would be wise for the Convention to conform to the inevitable circumstances. I think if it is understood that our meetings are to take place in the evenings, we can as a general thing have a quorum. We did have a quorum last Monday evening, and I think we can have it again, if we have not the morning meeting.

Mr. S. TOWNSEND—We can at least assemble on Monday evening and prepare ourselves for work on Tuesday.

Mr. HUTCHINS—I was here on Monday

evening and we adjourned for want of a quorum.

Mr. SHERMAN—There was a quorum at the time of meeting but not at the time of adjournment.

Mr. HUTCHINS—I understood the gentleman to say there was a quorum at the time of meeting and not at the time of adjournment. There was no quorum here when action was called for. I would move as an amendment to the proposition of the gentleman from Oneida [Mr. Sherman] that the rule be so altered that when we adjourn either on Friday or Saturday we adjourn until 10 o'clock on Tuesday morning of the next week. I am satisfied we shall have no quorum here on Monday. I was here on Monday morning last and I found there were twenty-five members then present, and in the evening when action was called for, we were without a quorum. It is impossible for members to arrive here from their homes in time to do business on Monday. I think we had better conform to circumstances, and not have a portion of the members in their seats, therefore I move as an amendment that the adjournments be had until Tuesday morning at 10 o'clock.

Mr. RATHBUN—There were seventy-eight names called and answered on Monday evening, according to my count, and there were four gentlemen that I know of that were in the Convention before the roll was called, that had left and stepped out, and it was their absence that caused the want of a quorum. That I recollect and can name the gentlemen.

Mr. SHERMAN—I move the previous question.

Mr. FOLGER—I call for the ayes and noes.

The question was then put on the motion of Mr. Sherman to order the previous question, and it was declared carried.

Mr. ALVORD—I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put on the amendment of Mr. Hutchins, and it was declared lost by the following vote:

Ayes—Messrs. C. L. Allen, Armstrong, Bergen, E. Brooks, Cassidy, Cochran, Comstock, Greeley, Gross, Hatch, Houston, Hutchins, Jarvis, Larremore, Loew, Nelson, Opdyke, Pierrepont, Prosser, Roy, A. D. Russell, Veeder, Wickham—23.

Noes—Messrs. Alvord, Andrews, Archer, Ax-tell, Baker, Ballard, Barto, Beadle, Beals, Beckwith, Bell, Bickford, Bowen, E. A. Brown, Champlain, Chesebrough, Clinton, Colahan, Conger, Cooke, Corbett, Curtis, Duganne, T. W. Dwight, Eddy, Ely, Endress, Ferry, Folger, Fowler, Francis, Frank, Fuller, Garvin, Gould, Graves, Hadley, Hale, Hammond, Hand, Hardenburgh, Hiscock, Hitchcock, Hitchman, Kernan, Ketcham, Kinney, Krum, Landon, Lapham, A. Lawrence, M. H. Lawrence, Lee, Ludington, Merwin, More, Morris, Paige, A. J. Parker, C. E. Parker, Pond, Potter, President, Prindle, Rathbun, Reynolds, Rogers, Root, Rumsey, Seaver, Seymour, Silvester, Sheldon, Sherman, Stratton, Strong, Tappen, M. I. Townsend, Van Campen, Van Cott, Wakeman, Wales, Williams—83.

The PRESIDENT—The question now is upon

the adoption of the original resolution of Mr. Sherman.

Mr. KINNEY—On that I call the ayes and noes. A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put on the resolution of Mr. Sherman, and it was declared carried, by the following vote:

Ayes—Messrs. C. L. Allen, Andrews, Archer, Armstrong, Baker, Ballard, Beadle, Beals, Bowen, E. Brooks, E. A. Brown, Cassidy, Cochran, Colahan, Comstock, Cooke, Corbett, Curtis, Daly, Duganne, T. W. Dwight, Eddy, Ely, Ferry, Fowler, Francis, Garvin, Graves, Hale, Hand, Hiscock, Houston, Jarvis, Kernan, Ketcham, Krum, London, Larremore, Livingston, Loew, Monell, More, Morris, Nelson, Paige, A. J. Parker, C. E. Parker, Pond, President, Prindle, Prosser, Reynolds, Rogers, Root, Roy, A. D. Russell, Seymour, Silvester, Sheldon, Sherman, Tappen, S. Townsend, Van Cott, Veeder, Wickham, Williams, Young—67.

Noes—Messrs. Alvord, Axtell, Barto, Beckwith, Bell, Bergen, Bickford, Champlain, Chesebro, Clinton, Conger, Endress, Evarts, Field, Folger, Frank, Fuller, Gould, Greeley, Gross, Hadley, Hammond, Hardenburgh, Hichcock, Hitchman, Hutchins, Kinney, Lapham, A. Lawrence, M. H. Lawrence, Lee, Ludington, Merwin, Opdyke, Pierrepont, Potter, Rathbun, Rumsey, Seaver, Smith, Stratton, Strong, Van Campen, Wakeman, Wales—45.

Mr. MORRIS—I desire to offer this resolution.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That this Convention shall adjourn at twelve M. to-morrow.

Mr. MORRIS—I offer this resolution for the reason that quite a number of the principal railway trains leave Albany between twelve and one o'clock. The train which is the way train on the Hudson River leaves at 12.15. The New York Central at 12.30. The Troy at 12.10. The Rensselaer and Saratoga at 12.50.

Mr. GREELEY—I move that we meet at nine o'clock to-morrow, and adjourn at twelve.

Mr. MORRIS—I accept the amendment.

The question was then put on the resolution of Mr. Morris, as amended by Mr. Greeley, and it was declared carried.

Mr. LAPHAM—I offer a resolution.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That the roll shall hereafter be called each Monday evening, and the names of all delegates absent shall be entered on the Journal.

Mr. E. BROOKS—Is that a debatable resolution?

The PRESIDENT—That is a debatable resolution.

The resolution giving rise to debate, was laid on the table under the rule.

Mr. WILLIAMS—I offer this resolution.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That after this week the daily sessions of the Convention shall commence at nine o'clock A. M., except on Monday.

Mr. E. BROOKS—I hope that resolution will not be adopted.

The resolution giving rise to debate, was laid on the table under the rule.

Mr. FULLERTON—I offer the following resolution, and ask that it lie on the table.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That the Committee on Revision be and they are hereby instructed to amend section 5 of the article providing for the organization of the Legislature, etc., by striking out the words "one thousand" in line two, and inserting in lieu thereof the words "eight hundred."

The PRESIDENT—At the request of the mover, this resolution will lie on the table.

Mr. BECKWITH—I wish to ask leave of absence for myself until Tuesday morning next, in consequence of the great fire which has taken place at our village.

No objection being made, leave was granted.

Mr. REYNOLDS—I offer a resolution.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That the Committee on Revision be directed to insert in the article on town and county officers, some provision under which county treasurers shall be subject to the same conditions as regards security for the performance of their duties, and removal for malfeasance as is provided in the first section of said article for the officers therein named.

Mr. REYNOLDS—In looking over the article as adopted there seems to be no provision for requiring the security.

The PRESIDENT—The Chair will inform the gentleman that debate is not in order on this resolution. If it requires explanation, it will go over under the rule.

Mr. SEYMOUR—I wish to ask leave of absence for myself until Tuesday morning.

No objection being made, leave was granted.

Mr. ELY—I wish to ask leave of absence for myself until Tuesday next.

No objection being made, leave was granted.

The Convention then resolved itself into Committee of the Whole on the report of the Committee on Counties, Towns and Villages, their Organization, Government, etc., Mr. BECKWITH, of Clinton, in the chair.

The CHAIRMAN—The Convention is now in the Committee of the Whole on the report of the Committee on Counties, Towns and Villages, their Organization, etc.

The SECRETARY proceeded to read the first section, as follows:

SEC. — There shall be in each of the counties of this State (except the city and county of New York) a board of supervisors, elected in such manner, and for such period, and composed of such numbers, as is or may be provided by law. The boards of supervisors shall possess and exercise the power to legislate in relation to the local and internal affairs of their respective counties and the towns and villages therein: Subject, however, to such rules and regulations as the Legislature may prescribe; and it shall be the duty of the Legislature, at the first session thereof after the adoption of this Constitution, to prescribe such rules and regulations by general laws.

Mr. HADLEY—The committee who made this

report did not see the necessity of making any change as to the organization of the governments of counties, towns and villages, and for that reason they reported no article upon the subject. As to the powers, they did report this first section of the article. At the time this report was made another committee of this Convention had previously made a report, which covered the ground intended to be covered by this first section. The Convention after spending several days in the discussion of that question have virtually passed upon this first section, and have incorporated the first three or four lines into the substitute which was offered by the gentleman from Oneida [Mr. Sherman], and it has passed this Convention, so I suppose, Mr. Chairman, that this section may as well be passed over, the Convention having already expressed its opinion, and taken action upon that subject. As to the second section, I will say, it was the unanimous opinion, so far as the committee were concerned, (one being absent), that something ought to be done, that the public sentiment of the State demanded that something should be done to incorporate into the Constitution some provision in substance restricting the counties, towns and villages of this State, to contract debts, or to become guarantors of corporations, that is contained in the present Constitution prohibiting the State from doing those same things. Seeing, or thinking that they saw, a tendency on the part of certain localities, under an excitement growing out of a desire for local improvements, the committee thought that the people throughout the State, as a whole, demanded that the counties, towns and villages of the State should not have the power to loan the credit of the county, or of the villages or towns, for the purpose of any local improvement, by way of lending their aid or indorsing the bonds, or guaranteeing the bonds of any intended railroad or any other corporation, whether manufacturing or otherwise. The committee were unanimous I believe in this recommendation (that is the six that were present were), and with that view they instructed their chairman to report this article.

The CHAIRMAN—Does the gentleman make any motion in regard to the first section?

Mr. HADLEY—I do not.

Mr. ALVORD—Has the first section been passed over?

Mr. HADLEY—I will state when the report of the Committee on Town and County Officers was under consideration before the Convention, I did then move to substitute the first article contained in the report of the Committee on Town and County Officers, etc. The Convention I believe, however, never came to a direct vote on that substitute but adopted a substitute for the amendment which was discussed for several days before this Convention. The Convention have already passed on that subject and the article is in the hands of the Committee on Revision.

Mr. E. BROOKS—I move then to strike out the first section.

Mr. GARVIN—I offer an amendment.

The SECRETARY proceeded to read the amendment, as follows :

Strike out in section 1, line 2, the words "except the city and county of New York."

Mr. GARVIN—In reference to this exception of the city of New York, the effect of which is to limit the city and county of New York to city government, and confine it entirely to those duties which are to be exercised through the city authority, it is very well known to every man who has had any experience in reference to the county of New York and its government that it is quite as important to have a board of supervisors in the county of New York as in any other county in the State. The reasons for this are so manifest that it never occurred to me that there could be such a thing, or such a suggestion as the exception indicates, from any source whatever, until I came to this Convention. It is well known that for the purposes of making the board of supervisors entirely independent, and that they should represent all parties in that city so far as the great parties of the county are concerned, the Legislature saw fit to pass an act which went into effect several years ago, by which it was provided that the two great parties in the city of New York, so far as they were represented in the board of supervisors should be equally divided, and these supervisors stand six and six to-day. For the period of eight or ten years that has been the condition in that board in that city, so that the two great parties there are represented equally. It was considered a great conservative measure, and it was acceded to by the controlling and dominant party on the one side with perfect cheerfulness, and thus they have continued down to the present day. Now this organization of the board of supervisors meets the views which have been presented to this Convention on several questions on which a vote has heretofore been taken. Here the minority are represented not only as a minority through the votes existing in the city of New York, but they have one-half of the representatives in this board, and the democracy, on the other side, who had a majority of forty or fifty thousand votes in that city, at the last general election, only have six. Now can any man tell any reason why the city of New York should be deprived of a board of supervisors more than any other county in the State? New York certainly in point of population has the largest number of any county in the State. In point of interest she has the largest interest in the State. In point of wealth she has the largest amount of wealth in the State, to be represented and taxed, and I see no reason on the face of the earth why she should be deprived of her board of supervisors, more than any other county. I have heard it suggested that the territory of the county is the same as the city. What difference does that make? You have got to confer this power on some other board, if you strike out the board of supervisors; but I ask gentlemen in this Convention what reason they have got to assign why we should be deprived of our board of supervisors? Does it cost the State one single cent for the board of supervisors? Not a farthing. We pay the whole expense ourselves. Why not give us a board of supervisors if we ask it. Gentlemen who come here to represent

the country and their constituents say the city of New York is not to have a board of supervisors. It costs them nothing; it is no expense to the State; no man is taxed in reference to it, yet those men stand up and deliberately say if we adopt this report that we are to be deprived of a board of supervisors. I should like to hear some reasons from gentlemen, why this exception is to be made. I have heard none. There is none; and yet gentlemen in this Convention deliberately report from the committee, to except the city and county of New York.

Mr. HADLEY—The reason, as I understand it, is this, that the city and county of New York coincide; there is no reason why there should be a board of supervisors in a city and county where the entire county is composed of the city. Let the common council or the city government take charge of the entire affairs of the county, the city and county being identical. Those are the reasons which operated upon the minds of this committee.

Mr. GRELEY—The city of New York, as the gentleman from New York [Mr. Garvin] has informed you, is now blessed with a board of supervisors, composed of six gentlemen, nominally from each political party. If that board shall be abolished, its duties will devolve naturally on the board of aldermen of the city—certainly on that or some other branch of the government—and we shall have dispensed with twelve office-holders, whose compensation is \$2,000 per annum each, and who cost the city a great deal more than that. [Laughter.] The majority in that city will entirely recover back whatever power they have lost by the constitution of this double-headed or equalized board of supervisors. They certainly will have nothing to complain of. There will be no defeat or failure of any of the proper functions of government because this board is dispensed with. All will be performed by a smaller number of officers, and at a reduced expense; and the political power which is now exerted by that double-headed or politically equalized board, will all devolve on a board representing, and responsible to the political majority. Why, then, any gentleman representing that majority should complain, I cannot imagine. If one of the minority should get up here and say, "We wish the protection of this board of supervisors, and we insist, therefore, that it be continued," I could understand it; but why gentlemen representing that democratic majority should wish to continue this double-headed board, and refuse to allow a very large installment of power to go back to their own party and be exercised by their own elective officers, I cannot imagine. I trust this provision will not be stricken out.

Mr. OPDYKE—I was very much surprised to hear my friend from New York [Mr. Garvin] advocate the continuance of that board of supervisors for the city and county of New York. I had supposed the sentiment was entirely unanimous in favor of dispensing with that board which constitutes a duplicate government for the city and county of New York. All the duties that it now performs can with safety and propriety be devolved upon the city government; in fact, in past years the city government have exercised those

powers, and they can do it again; and it is no more use than a fifth wheel to a wagon, and it is a very expensive appendage. We have found by experience that it has added very materially to the expenses of the city and county. I believe that I am authorized by the Committee on Cities, who have had that question under consideration, to say, that they are unanimous in the opinion that that board shall be dispensed with. Gentlemen have heard no reasons, I take it, which would satisfy the Convention that it is necessary to continue it, and every reason pointing to a more economical government of the city and county of New York, which is very essential, and which all parties desire, point to the abandonment of this board.

Mr. LAPHAM—In order to save the time of the committee, I would suggest to gentlemen that there is a motion pending to strike out this section on the ground that the action of the Convention has dispensed entirely with the necessity of discussing or continuing it. If gentlemen will turn to the third section of the article which has been perfected in this committee, document No. 83, they will find that the committee have already passed upon this precise question and have adopted a section which is referred to the Committee of Revision, embracing this exclusion of the city of New York. Now, why should we discuss this question over again?

Mr. S. TOWNSEND—As I understand the progress the Convention have made upon this particular point, they have not in the section they have adopted provided that the city of New York shall be excluded from having a board of supervisors; but, at all events, if they have, it is open to revision by the Convention. I agree with the gentleman from New York [Mr. Garvin], who has spoken on this point, that there is no good reason adduced here why this exception shall be made in relation to the city of New York.

Mr. ALVORD—I must rise to a point of order. I ask the Chairman to turn to document No. 82, where he will find that the Convention have already deliberately passed upon this subject, and even upon the incoming report of a committee it cannot be considered, except in the usual parliamentary way—by a reconsideration.

The CHAIRMAN—I think the point of order is well taken. If my recollection serves me right, that question has been already passed upon by the Convention.

Mr. S. TOWNSEND—If it is out of order I merely wish to say that I disapprove of this exception in the case of New York, and I warn the gentlemen from the city and county of New York how they make this exception—

Mr. ALVORD—I insist upon my point of order.

The CHAIRMAN—The gentleman is out of order, as the amendment of the gentleman from New York [Mr. Garvin] is not admissible.

Mr. ALVORD—I contend that the Chairman has a right to strike the section out.

The CHAIRMAN—The Chair would prefer to leave that question to the committee.

The question was put on the motion of Mr. E. Brooks, and it was declared carried.

The SECRETARY then proceeded to read the second section, as follows:

SEC. — No county, town or village now existing or hereafter organized shall in any manner give any of its property or money, or loan its credit, to or in aid of any individual association or corporation, nor directly or indirectly become a stockholder in any association or corporation; nor shall any county, town or village in any manner guarantee any obligation of any individual, association or corporation.

Mr. BELL—I offer an amendment to the second section.

The SECRETARY proceeded to read the amendment, as follows:

Add to section:

"Except the consent shall first be obtained, in writing, of such numbers of the tax payers of such town or city or their legal representatives, appearing upon the last assessment roll respectively, as shall represent a majority of the taxable property of such town or city."

Mr. BELL—This amendment is offered to meet the existing state of things. By certain acts of the Legislature certain towns are authorized to loan their credit for the purpose of constructing railroads through or adjacent to them. Such an act was passed in regard to the Midland railroad, running through nearly the center of the State. Such an act was also passed in reference to the Black River Valley railroad, running through the counties of Oneida, Lewis and Jefferson, connecting the waters of Lake Ontario with the Central railroad at Utica. Action has been taken under these different laws, and many of the towns have voted to bond themselves or to issue bonds to a certain amount; others have given the consent of the tax payers that these towns may be bonded to a certain amount of money to aid in the construction of these roads. The language that I have given in the above exception is precisely the language of the statute upon that subject, permitting these different towns to issue bonds for the construction of these roads; and inasmuch as this work has been entered upon, and the process of bonding is going on, it would not be acting in good faith for the Convention now to deprive the towns of that privilege. However we may think of the propriety or the impropriety of this proceeding, it is the legal practice now of the State. Without this aid many of these railroads cannot be built, nor the country through which they pass developed. If this section is retained as reported by the committee, it is important that this amendment, containing the exception, should be made to it. Therefore I offer the amendment.

Mr. ALVORD—I cannot agree with the amendment of the gentleman from Jefferson [Mr. Bell]. If I understand it correctly, it legalizes forever hereafter, action which may be had without the interposition of legislative action by any town, village or county, directly, for bonding themselves for railroad purposes. I am in favor, sir, of taking care of that, which has been done in the past under law because of this fact; take for instance the Midland railroad: they have gone on there and some of the towns have actually put themselves in the position of being bonded while the question is being mooted in other towns along the line. Unquestionably as far as regards those

towns which have bonded themselves, they would continue to be bonded notwithstanding the prohibition of this provision, but other towns upon the line would not be enabled to come to the rescue for the purpose of carrying through that work, although they are bound equally, when they enter into the engagement with their sister towns along the line, and for that reason I shall move to amend the matter by adding at the end of the section "in pursuance of existing laws." I only do this for the reason I have stated. I desire to state now, as I have said heretofore, that I think this idea of bonding towns, counties and villages and cities for any such purpose is of doubtful propriety; I am, therefore, heartily in favor of the proposition made by the committee, that for the future we shall prohibit, in terms constitutionally, any such thing to be done, but that so far as regards the present roads and the towns that have bonded themselves, they shall be protected by permitting other towns along the line where those roads have been projected and laid out, to come in and share with them the burden of building the contemplated improvement. I hope, therefore, this section will be passed with the simple amendment I propose—"except in pursuance of existing laws."

Mr. BICKFORD—Will the gentleman allow me to ask him a question; whether he intends his amendment to apply to all these provisions in the fourth section?

Mr. ALVORD—I do, sir.

Mr. RUMSEY—I am heartily in favor of prohibiting towns or counties of this State from loaning their credit to any extent for the purpose of building roads, or for any other purpose connected with corporations in any way. I think the experience of this whole country—not simply the State of New York, but the whole western country—has shown the folly of allowing things of that kind to be done; for what men believe to be an advantage is often in truth but a fancied benefit. They have been in the habit in the West of mortgaging their farms, and the towns and villages in the end will find they have imposed these burdens upon themselves for which they will receive no corresponding benefit, and it seems to me enough to say, that towns are not organized for the purpose of creating railroads, that it is no part of their business to do so, and that the railroads should be organized and created, and put in operation, entirely without the aid, or without the action, to any extent, of the corporate powers of the towns or counties. But it seems to me that the committee have not adopted the right course for the purpose of promoting this thing: the way to do it, if it is to be done at all is to strike at the source of the power. Towns have not inherently the right to bond themselves for purposes of this kind: they must go to the Legislature and derive the power to do so from the Legislature; and I shall propose at the proper time, when the question shall come up in regard to the powers and duties of the Legislature, to offer then, if it shall not be otherwise offered, a provision preventing the Legislature from passing any law authorizing towns or counties to appropriate any of their money or means for this purpose. And I propose, therefore, that this section be now stricken

out, so that it may come in where it properly belongs as a portion of the restrictions imposed upon the Legislature.

The CHAIRMAN—There are two amendments pending at this time.

Mr. RUMSEY—I do not offer any now.

Mr. SEYMOUR—I am heartily in favor of the proposition with the amendment proposed by the gentleman from Onondaga [Mr. Alvord]. I think this is the point to meet the evil; it is to deprive the towns themselves, who issue these bonds, of the power of so doing. If we do that, then I submit to the gentleman from Steuben [Mr. Rumsey] whether it would be possible for the Legislature to confer a power which the organic law of the State has refused for the purpose of better securing the towns themselves against the effect of this, I consider it to be a very great evil. I prefer that it should be met as the committee propose to meet it; to strike at the root of the evil and deprive the towns of the powers of issuing bonds for these purposes. I will not enter into an exposition of what seems to be a very great evil flowing from the exercise of this very great power in the towns and counties of this State. From what has been already said in the committee I think it is the sentiment of this Convention that this power should not any longer be permitted to be exercised in this State; that it is fraught with evils of such deep and generally prostrating effects to the industry and prosperity of the country that it should be settled here by constitutional inhibition. I think the amendment proposed by the gentleman from Onondaga [Mr. Alvord] is proper. However, we may regret the course that has been taken hitherto, sanctioned by legislative enactment, yet I do not think we should interfere to prevent the carrying out of a system which has been prepared, and upon which some towns in instances which he has alluded to have acted; and in reference to which other towns from their local position and interest are supposed to be ready to act. It would seem to be a foregone conclusion, and perhaps it is right and proper to permit an enterprise which has been commenced in reference to such aid as is to be derived from these town bonds, while some towns have resolved to bond themselves, and to permit other towns acting in concert to carry out the original proposition. Beyond that I never would go, and I think it will be one of the greatest points gained financially to the people of this State if this proposition should stop the matter here. As I said, it would carry us perhaps beyond the proper limits of this discussion were we to go into a consideration of the very many evils that result from such a course of procedure. They have been fully exemplified in the history of many of the Western States, and I fear, indeed I may say I am quite sure, the time will come soon when the people of this State will feel the injurious effects of the same system, and I hope it will be stopped here.

Mr. RUMSEY—I desire to ask the gentleman from Rensselaer [Mr. Seymour] a question. I understand him to say that towns have not now the right to bond themselves without the aid of the Legislature. Am I right about that?

Mr. SEYMOUR—I know this fact, they have

come to the Legislature, but I did not intend to pronounce an opinion on that subject.

Mr. RUMSEY—If that be so, will it not look awkward for us to put into the Constitution a provision forbidding a thing which they have not the right to do, while if we strike at the power of the Legislature we strike at the source.

Mr. SEYMOUR—I do not wish to discuss whether the Legislature is or is not the only source of the power, but I am quite sure if we place an inhibition on these towns the Legislature cannot give them the power.

Mr. EDDY—I speak, sir, for a constituency that have had experience in this matter. I am on the line of the Albany and Susquehanna railroad. The history of that road is well known to the members of this Convention, the struggle that it has required and the efforts that have been put forth to get it thus far completed; and it is also well known that it never would have been built had it not been for the subscription to the stock by the different towns along the line of the road. And, sir, although it was effected with some difficulty, and there were, at the time when the subscriptions were being taken, a great many objections to it by the different tax payers along the line of that road, yet, sir, the towns did bond themselves and in consequence the road has been built; and, sir, you may go the length of that road to-day and consult with citizens of the different towns that are now bonded for it, and I will defy any member of this Convention to find five men in any single town who do not now rejoice in the fact that they took the course they did and have got the road. These same individuals, who so strenuously opposed the plan, at the time of the taking of the stock, and issuing bonds by the several towns, find to-day, that their real estate is in consequence of the building of that road enhanced in value from fifty to one hundred per cent. The investment has proved eminently successful not only in developing a section of the State that would otherwise have ever remained in obscurity, but also in a financial point of view. And, sir, there are other roads in contemplation to be built on the same plan of the Albany and Susquehanna. There is an effort being made at this time to bond the towns, which is partially effected, for a road from Utica, intersecting the Albany and Susquehanna, and on to Rondout. If we can judge of this road by others, it will prove a success. Any one has but to glance at the map to be satisfied as to the result of such an enterprise. To connect not only with Utica, but by a short cut, not to exceed eleven miles, with Rome and all the northern roads leading to that place, by an exceeding short route to tide water, along the rich valley of the Sauquoit, on to Bridgewater, Richfield Springs, Cooperstown, and along the valleys of the Susquehanna and Charlotte rivers to Rondout—these are some of the grand enterprises now in contemplation in this State. Will this Convention prevent, by an organic law, the only feasible course to be pursued to accomplish these grand results? I trust not. If any one has any doubt in reference to the business of the Albany and Susquehanna road, its utility and necessity, they have but to go over the route at the present time. The road

is only a little over half built, and the business is immense. Only yesterday a train brought to this city fourteen car loads of live stock, collected along the line of the road. Now, when I see such success, as the results of efforts of this kind, in our own locality, and in the counties through which that road leads, I am not willing to place myself on the record as being in opposition to other towns, other counties, other lines, accomplishing in the same manner, the same success, and like results. Now, sir, I sincerely hope that this Convention will leave the Constitution as it is, or accept the amendment of the gentleman from Jefferson [Mr. Bell], and not prohibit the Legislature from granting to towns the privilege of accomplishing the work of developing portions of the State that would never otherwise be developed, and by so doing not only enrich themselves, but add so largely to the commerce of our great cities, our noble State, and the nation at large.

Mr. ALVORD — I desire to change my amendment so that it shall be inserted after the word "shall," in the second line.

Mr. LEE — I am in favor of any policy that shall, on equitable principles, develop the resources of the State; but, sir, I am opposed to the amendment of the gentleman from Jefferson [Mr. Bell], and also the amendment added by the gentleman from Onondaga [Mr. Alvord]. I agree with the report of the committee. I will admit at the outset that there may be exceptional cases, where it would be expedient to provide that towns and cities and corporations might bond themselves. I think the case alluded to by the gentleman from Otsego [Mr. Eddy] is one; that is a case in which in practice I made an exception being in the Senate on one of the occasions when relief was sought at the hands of the Legislature. I voted for it, but as an exceptional case. What is the method usually adopted by the projectors of these enterprises, for it is best to look at this subject in a practical point of view? When a projected line of railroad is made it is usually by far seeing, energetic men who having conceived the idea that good perhaps may result, if means could be obtained for its construction; their first attempt is to procure subscriptions; failing in that they go to the towns and to the cities and they ask aid of them, and how do they act? You will find that the application is made through the leading men of the towns in the interest of those who are to form the company and control its operation and derive incidental benefit from it, and they come into the rural and secluded districts, with a great flourish of trumpets, with a great array of facts, or pretended facts, and allege that the several hamlets that may exist or may be distributed on the line of the road through the county can, by lending their credit for a few years, and only for a few years, secure a paying stock, build up these hamlets into first class towns and cities, and they thus excite the imagination until relying entirely upon the facts, upon the showing of those who have addressed them, they all move in a body to engage in the enterprise thus set forth and determine the question without proper reflection, and act on this *ex parte* representation of parties in interest, while the great mass of inhabitants of the towns, the

great mass of those possessing property to be taxed and interested in the decision of the question have no fair opportunity of being heard. Now, it must not be forgotten that gentlemen who advocate an enterprise of this kind present the most specious views and arguments of which the subject is susceptible; and it is not to be supposed that gentlemen living in the rural districts are possessed of the facts, or that they have had time to stop in the prosecution of their various avocations and look up the data by which they shall be able to verify or disprove the facts as presented to them and in my opinion nineteen times out of twenty such communities, when they decide thus to use the credit of the town and of corporations, will find themselves committed to their own disadvantage. Why, sir, in the case of my own town we had a meeting of the directors of the Midland railroad, an enterprise that I should be very glad to see completed and carried out, by equitable means, but still I am opposed to its being done against the interests and wishes of the parties living on the line of that road. It was asked by the projectors of this road that the town in which I reside should bond itself for three hundred thousand dollars (although already enjoying canal and railroad communication with the sea-board and with the interior), to an amount equal to twenty seven per cent of the assessed valuation of the whole property of the town. It may very well happen that a very considerable portion of the citizens of that town if they should consent to use their credit to the amount of twenty seven per cent of the assessed value of their property might lose their whole property in this way, many of whom are in debt and mortgages perhaps resting upon their property to one-half what they are worth. If by the decision of their neighbors an additional mortgage of twenty-seven per cent on the assessed value is levied upon them; the consequence is that these parties will be obliged to sell out or be sold out, and leave the town or county to other parties coming in and sharing the benefits. Then, again, there are multitudes of individuals in circumstances which entirely preclude their rendering this aid, and having bought their property and paid for it, it seems to me only right that they should be consulted personally as to whether they will use their credit or means for a corporate enterprise. I concede that it may very well happen and does happen, sometimes that people are unwise in regard to these matters. I concede in some instances it might be better for individuals to use their credit, to make an extraordinary effort to raise the money to carry forward an enterprise of this kind, still I am opposed to the policy embodied in this amendment, because I believe that people who have purchased and paid for or agreed to pay for their property should have the right to say themselves, not a majority of the people in a town or city, whether they shall put a mortgage upon it, for we all know from the experience that the country has had in the Western States, and to some extent in this State, that it has led to heartburnings and wrongs, and I hold that any enterprise which has legitimate merits, the owners of capital will be quick to discover it; and those who have surplus capital will be willing to employ

it in this way for the development of the country. They are entitled to all the profits that will result from it. I am entirely opposed to the principle of the amendment, and concur most heartily in the views presented by the committee, and hope they will prevail.

Mr. HALE—Mr. Chairman, I shall vote for the amendment offered by the gentleman from Onondaga [Mr. Alvord], for the reason that I consider that it would make this section less objectionable. I am, however, in favor of striking out the whole section. I am not in favor of incorporating into the Constitution an absolute prohibition of towns, counties and villages aiding in enterprises which they may deem necessary for their own prosperity and convenience. In looking at the report of the committee preceding the article, it seems to me evident that the views which prompted the writing of the report are not embodied in the article. They say in their report: "Your committee, in the discharge of their duty, in view of the growing tendency to create debt, see, or think they see, a necessity for imposing some restrictions upon the power of counties, towns and villages to loan their credit to corporations." That was the "necessity" that they "saw." When they drew the article, instead of "imposing some restrictions," they impose an absolute and unqualified prohibition. If it is deemed advisable by this Convention that the power of towns, cities and villages to aid in such enterprises shall be restricted and limited, and a proper proposition is framed for that purpose, I will not say that it should be opposed; but when the Convention undertakes to impose an absolute prohibition upon towns, counties and villages, from in any way, directly or indirectly, becoming stockholders in any association or corporation; in other words, when it undertakes to say that the people of those sections, in their corporate capacity, shall not have the privilege of aiding in the construction of railroads or in forwarding any other enterprises which are to be for the benefit of the community, I must say that such provisions are very objectionable. If this section should be adopted, it would be regarded by the people of many sections of this State, sections which are not favored with railroad facilities, and are desirous of having such facilities, and are willing to impose burdens upon themselves for that purpose, as a blow inflicted upon their prosperity by this Convention. It would create an opposition to this Constitution, and a legitimate opposition. The part of the State which I represent is engaged now in an enterprise by which it hopes to secure the facilities of travel and transportation which it does not now possess. It is difficult for gentlemen living in other parts of the State, who have such facilities, to conceive the absolute necessity we believe we are under for having such facilities and of having the privilege of doing just what this section would prohibit us from doing. We have had a great deal said here about the evils, the great evils which result from such acts; I have yet to see them pointed out. The Western States have been referred to. I am aware that the farmers in the Western States, who have mortgaged their farms for the purpose of building railroads, have found an in-

convenience resulting from that action, and that evils have resulted therefrom. Would it be wise for the Legislatures of those States to prohibit those farmers from mortgaging their farms to aid such enterprises for the reason that such inconveniences have resulted? I hope that this Convention will not, in its zeal for economy, which is a commendable zeal, I admit, forget that there are other purposes which ought to be accomplished besides the prevention of the creation of debt. I do not believe that the development of the resources of this State, that the desire of the people to aid in furnishing to themselves facilities for transportation and for travel are to be discouraged, and I think that if any provision is incorporated upon this subject in the Constitution it should be, as the committee say in their report, in the nature of restriction, and qualification, rather than prohibition. But I am in favor of leaving this whole subject where it belongs, with the people of this State, represented in the Legislature. I think that we cannot provide against all the exigencies that may arise before the opportunity will offer for again amending the Constitution. I do not believe that there are in this State great evils resulting from the right of towns and counties to aid in enterprises of this character. I think the testimony of the gentleman from Otsego [Mr. Eddy], who has addressed this committee, is worthy of some consideration, that in the section through which the Albany and Susquehanna railroad is built, a section where this system was adopted, perhaps more generally than in any other part of the State, so far from its resulting in any great evil, the whole people are satisfied and pleased with the result; and I think these gentlemen who live in portions of the State that are not affected by this section, whose property is not voted away as the gentleman from Oswego [Mr. Lee] says, by any such means as this, are not the ones to come in here and caution us, who are to be the sufferers by this kind of legislation and by the exercise of these rights on the part of towns and villages, against "great evils" that we are to suffer in consequence of being allowed to tax ourselves for these purposes. In whatever laws have been passed, the Legislature have put in careful restrictions and qualifications of the rights of towns and villages to tax themselves or loan their credit; they have said you must have the written consent of a majority of the tax payers, it must be duly acknowledged before officers authorized to take acknowledgements of deeds, those tax payers must represent a majority of the taxable property; and it is only with such restrictions and qualifications as these that this right has been permitted to be exercised. I have heard no complaints coming from parts of the State which are affected by these laws, of the powers given to them by the Legislature; the complaints come from those gentlemen who are opposed to it in theory, in the abstract; their pockets are not touched by the means, but they are afraid that we, who are unfortunate enough not to enjoy the facilities that they possess, are going to impoverish ourselves by recklessly exercising this right which has been given to us from time to time by the Legislature. I respectfully

submit to these gentlemen that we in these sections of the State, feel ourselves quite competent to take care of ourselves. No law has yet been passed *compelling* towns, cities, and villages to tax themselves or to loan their credit in aid of any enterprise; and no such law could be passed constitutionally; but we ask that we may have the right to do this when we choose, and in our own way aid ourselves in the acquisition of such public benefits and facilities as we may suppose we require.

Mr. KRUM—In rising to address this committee on this subject it is not without a considerable degree of diffidence. I feel, sir, that the principle involved in the report of this committee is of such a character that it should be looked after with a great deal of care on the part of this committee, before they seek to incorporate it as a provision in the Constitution of the State of New York. What does it desire to do? It desires to prohibit every county, every town, every village in the State of New York from in any way loaning its money or its credit to any individual association or corporation. I had supposed that the experience in this State had settled the question as to the propriety or impropriety of towns bonding themselves to build railroads. I, too, live along the line of the railroad which the gentleman from Otsego [Mr. Eddy] has spoken of. I have seen the practical workings of that system, and I know the means by which that railroad was built and became an absolute certainty. For ten years or more that project had the aid of all the subscriptions that could be obtained for it, had the aid and energy and perseverance of all its friends, and more particularly the gentleman who now stands at its head, but it still slumbered and slept. Every one conceded that it should be built, every one conceded that it would open up a section of country that before had lain almost dormant and quiet, and that if built it would not only increase the value of the real estate through which it ran, but it would pay the individuals who subscribed for it. Money was exhausted, every resource that could be thought of was exhausted, energy and skill and perseverance were exhausted, until as a last resort that indefatigable and persevering man, Joseph H. Ramsay, applied to the Legislature of the State of New York for a law authorizing towns along the line of that road to bond themselves to aid in its building. The law was passed, and to-day every town along the line of that railroad is a stockholder in the corporation, and to-day the railroad is a certainty and a fixed fact. But for that law, but for that provision, its building was an absolute impossibility. Now, how has the system operated? Gentlemen upon this floor who oppose this measure say that we will not go into the question as to how it will operate, as to the evils that will grow and arise from it. Gentlemen dare not go into them. The very moment they seek to show the evils, they show the benefits in a double-fold. Why, sir, every town that has taken stock in that road finds the land in that town increased in value more than double the amount of stock that the town has taken. Sir, a farm that could have been bought for three or four thousand dollars before this road was

built, now cannot be purchased for less than five or six thousand dollars. I had supposed that the principle was well-settled, that it was proper that communities along the line of the road who were to be benefited by the building of the road were the proper persons to help build it. What is the argument against it? The gentleman from Onondaga [Mr. Alvord] does not speak boldly against it, but he says the principle is of doubtful propriety; the gentleman from Steuben [Mr. Rumsey] says it is no part of the business of towns to build railroads; the gentleman from Rensselaer [Mr. Seymour] says he is in favor of the principle of prohibition, so as to take care of the interests of the towns. I would like to know, sir, when either of those gentlemen became the guardians of all the towns and counties in the State of New York; I would like to know where they get their power, to assume to be the guardians of the interests of my town; I would like to know when they obtained a right to be the guardians of the interests of any other town or county in the State of New York, save, perhaps, their own. I undertake to say that the people in the town where I reside know better what is for their interest than the gentleman who resides in the county of Rensselaer. It is wise, in my opinion, to leave each town, each county, each village, untrammelled in this particular, and permit them to take such action with reference to the building of railroads, loaning their credit or anything else, as the people of those towns may see fit to do. Again, sir, the gentleman from Oswego [Mr. Lee] while he is opposed to the principle of bonding towns to build railroads, yet says that he voted for the bonding of towns in the case of the Albany and Susquehanna railroad; he said he considered that a proper case. Now, if that was a proper case, and he was induced when he was in the Legislature to cast his vote for it, let me ask the gentleman if there may not at some future period, another proper case arise when it will be well to give the towns and villages along the road the same privilege that he saw fit to give in the case of the Albany and Susquehanna railroad.

Mr. LEE—Not one case in ten might occur, but there might be nine out of ten where great injury and wrong would be done.

Mr. KRUM—I do not know that the gentleman has the right to say that where one case would be proper, ten would be wrong. That should be left to each particular community, and it is not for him to say, or any other gentleman upon this floor. Our community, in connection with the people who reside between it and the village of Catskill, have already taken active measures for the organization of a road, running from the village of Schoharie to the village of Catskill; meetings have been held along the line of that railroad in all its towns, and the people in each town are anxious to subscribe to, and become stockholders in that railroad, and thus aid in its building.

Mr. HARDENBURGH—I would ask the gentleman if they are going to run the road on the old track?

Mr. KRUM—I do not know whether it is to be built on the old track or some other place; I

understand the line has not yet been practically located; but as to whether we are to build it on the old track or whether we are to build it on some other track, I suppose will not affect the principle. Now, it seems to me, that we are doing something if we incorporate this provision in the Constitution of the State of New York, which will be unwise and injurious, and, in my opinion, although I do not often throw out a note of warning, that provision incorporated in it will do more to defeat the Constitution at the polls than any other provision that can be inserted. It has got to this pass now-a-days, sir, that people believe they have the right to govern themselves, and whenever a proposition is suggested which takes from the people that right of self-government, that moment they are in arms against the principle and inevitably opposed to it. This proposition strikes direct at the principle of self-government in the people, and says to them, "So far as your own town is concerned, you shall not do as you desire, but we will prohibit you from so doing; we will take from you the power that you otherwise would have, and prohibit your exercise of it." The moment you go to the polls and ask the people to indorse such a sentiment, such a principle, that moment, sir, you create a question, that, as I said before, does more to defeat this Constitution at the polls than any other one question that can be inserted in it.

Mr. HARDENBURGH—I had supposed that this question, at least, was one about which we would have as little trouble and as little diversity of opinion as any of the questions that would come under our consideration, and I confess my surprise that any gentleman here can stand on this floor and deliberately, for any length of time, argue and contend for the proposition that there is any principle whatever which will justify one class of men in taking away the property of another. Take the argument of my friend [Mr. Krum] in the inverse order of that in which he has delivered it before the committee. He says, depriving the majority of this right strikes at the right of self-government. Does he, fail to perceive that the proposition which he maintains here, strikes at a right more sacred than that—the right of private property, which government alone was instituted to protect? When I can be convinced or shown that a principle has been discovered by any political thinker which justifies 101 men out of 200 in taking away the property of 99, for any purpose whatever, other than governmental, that may in their imaginations conduce to the advantage of the 99, I will advocate the amendment. Now I propose to say a few words as to this practice—I will not dignify it by the name of principle—

Mr. BELL—Do not all taxes imposed by majorities take away the property of a minority?

Mr. HARDENBURGH—Certainly. But the distinction between it and a tax of this kind is so broad, that I am a little surprised that my friend should have asked the question. In the organization of civil government and society each man has to furnish to the government a portion of his property, in its proper ratio, which the government requires to enable it to protect him while accumulating it, and secure him

in the enjoyment of the balance. But it has never been claimed that a majority could tax, for private purposes or for private corporations, any body of men; you have never heard until the decision in the court of appeals where private corporations called upon the public, and, by the instrumentality of a majority, took away their property. The distinction, as I have said, is broad and clear, and, while I grant you that for school purposes, which affect the entire community, and for the purpose of creating a fund to carry on your government, a tax is proper and right, and received, acknowledged and paid as such. Still this is for public use and not for private purposes.

Mr. E. BROOKS—Yet is not private property every day or almost every month in the year taken for public use?

Mr. HARDENBURGH—Yes, sir.

Mr. E. BROOKS—And is not that principle recognized as constitutional and just?

Mr. HARDENBURGH—It is taken for public use; but, sir, the distinction, I repeat, is clear. Then it is taken for public use and for the use of the entire commonwealth. Here you propose to take it for the use of one county or two counties—a *portion* of the population.

Mr. FOLGER—Compensation is given when it is taken.

Mr. HARDENBURGH—I thank the gentleman for the suggestion. I know in that case compensation is given, but here it is not, except it may be found in that cloud or visionary dream of speculation that some men have when they advance or urge such a project.

Mr. HAND—The people of our town by a vote, agreed to expend thirty thousand dollars in building a bridge. Now in what respect does that principle differ from the one proposed.

Mr. HARDENBURGH—Was that bridge *private* property or *public* property. The distinction is as broad there as elsewhere.

Mr. HAND—They taxed us for it.

Mr. HARDENBURGH—I see no difference in the principle in the case of a bridge. It is a public work. The bridge benefits the people of all sections of the country—one quite as much as it benefits another. I propose now to look at the manner in which this law is executed, no matter what restriction you may put upon it, such as suggested by my friend from Essex [Mr. Hale], you will run into this evil notwithstanding, that of unfairness and inequality. I have before me the exception offered by my friend [Mr. Bell] to the report of the committee which I will read: "*Provided, however, That the powers and authorities conferred by this section shall only be exercised upon condition that consent shall first be obtained in writing, of such numbers of the tax payers of such town or city or other local representatives appearing upon the last assessment roll respectively, as shall represent a majority of the taxable property of such town or city.*" Now let us see if that renders a safeguard at all, or furnishes us with any sort of safety. Every man who owns a dog pays a tax, and a majority may well be secured for a town bond when no single one of those voting is called upon to pay a dollar of tax required to pay the bond. Is not that dangerous? I will give you another illustration, and if any

gentleman in this Convention can answer, I would like to have him answer me, for I am seeking and praying for information on this subject. You tax the real and personal property of towns. In the town in which I live the total assessed valuation of the personal property is about equal to the assessed valuation of the real—one-half personal and one-half real. The hue and cry is that you are enhancing, doubling, trebling and quadrupling the real estate, but how do you add to the value of the mortgage or stock which the widow owns or the personal property of the man who has spent a life of toil in accumulating it, by any of these improvements? I would like to know if you do not by your proposition take away from the value of the personal estate and by this process double and treble the value of the real estate at the expense of the personal estate owners? By what principle of natural justice can this be justified? and I ask you all again, if you are not in favor here of preventing the State from lending its aid or its credit on giving its money to private corporations in the precise language of the report of the committee preventing towns and counties? Why, if you cannot allow the whole people why will you trust any particular portion or parts of them? But reasoning far above these minor considerations there is a great principle you violate here, and when the court of appeals made its decision in the Susquehanna case it struck a fearful blow at industry and credit and such a one as I think ought to be corrected here to the extent we are capable of doing it. You strike a blow at the strongest incentive man has to labor, you strike at the very arm of labor because I say no man cares about accumulating if in the population among which he lives what he gathers can be divided every year among the idle and the worthless. This power of bonding towns goes far beyond railroads. You can build a church, you can build anything which a majority poor or rich in a community may say is for the benefit of that particular community, and when you give to that community that power you strike, I say, a blow at industry and there is no inducement for a man to accumulate property. The principle is the rankest and purest agrarianism, it is founded on *that* principle and is destruction I say, to the advancement of the people and to the development of our resources. I am not afraid of the poor man in this controversy. He has discovered already that it injures him. The town in which I live has been bonded to a railroad that goes as close to the moon as possible, running over Pine Hill, and the rest of the towns along the route are not bonded, I believe, with the exception, perhaps, of one of them, which, I understand, is about to bond herself. The town of Kingston is bonded for half a million of dollars. The law gives the power to take thirty-three per cent of its entire assessed valuation, one-third of the whole town. I know they only take one-half now, as the first installment; they propose to spend that before other towns are bonded. How are we to get rid of this difficulty, when one town is bonded, and another is not? I propose to lay the axe at the root of the evil. I would rather stop now and lose six

hundred thousand dollars, than lose twelve hundred thousand more. The effect of it is the same notwithstanding what has been said by the gentlemen who have referred to and illustrated the case of the Susquehanna road, and who thought they had established the fact that this principle was right. I will ask them if that road did not get aid from the State—aid that is now forever cut off, if this Constitution is adopted? They see at once that would not do. We propose to stop the State from doing any such thing hereafter. I trust, when you get your towns in this situation, bonded for one-half or one-third, to say nothing of this particular and alarming juncture of our financial affairs, of the State debt-bonded debt, and internal revenue—saying nothing of all that—you have a mortgage on the entire real and personal property of that town or village. I say that the effect of it is to check our capital, and the poor man who wants to borrow two hundred and fifty or five hundred dollars cannot get it because the tax upon it is greater than the interest allowed by law. You advise men to put their money somewhere, where they are not building railroads. I doubt very much if that is not the effect everywhere. It is the natural effect, I submit, that I find is the result of it. Men will not invest when they are out of pocket, and, therefore, it is the man who wants money to use in business and cannot get it that suffers. In the construction of these roads under the operation of such a system as this it leads to immense frauds. In each one of these corporations—I say nothing now of the Susquehanna—the county becomes a stockholder. That is all she can do, she never has enough stock, however, to have control, and she has not a single voice in it except through her supervisors. The corporation controls the whole affair, and you put in the hands of thirteen men who perpetuate themselves, the entire sums furnished by the towns and it is utterly impossible to avoid that result. Now I submit you have no business to do that. Now in the case of the Susquehanna, which is the only case to which our eyes are directed, I understand they got from the State \$500,000, and they point to that as a practical illustration of this scheme and to show the beneficial workings of it.

Mr. ALVORD—They got from the State \$750,000 in all.

Mr. HARDENBURGH—That was a road think myself ought to have been built. Three-quarters of a million was given by the State, but I always opposed its being built on any such system, as I ever will, no matter how much the road will pay. No man, nor any class of men, nor any majority of men, have a right to take away one single sixpence of a dollar that I have earned by my industry, care and prudence, except that portion of it that belongs of right to the State, because it protects the balance. It is pure and rank agrarianism, and of the most wicked kind, and in a government like ours it is worse than it would be elsewhere. A government of more power, and where the power rests solely in the majority, it should be protected here as private property, as in the Bill of Rights, or somewhere

where the Legislature cannot reach it. There are certain rights in a government like this that we do not desire to give even to the majority, and this is one, I think—the right to be protected in our person and property. It is true you can take away private property for public use, giving just compensation on taking it at its assessed value. That may be just, perhaps, and yet that would be a very doubtful right in many cases; but I assure gentlemen here, and I call to my aid the past experience of this people in support of my assertion, that wherever it has become necessary for a road to be built or an improvement to be made to develop this country and improve the condition of the people of this country, private enterprise has ever been at hand to accomplish it, and the farmers, whom my friends say are willing to bond their towns, need only give thirty-three per cent—that is all. I take away from them no right. Let him come to the farmer who dreams night times of the business increase in his property, and let him put thirty-three per cent of his valuation in the common pool and take his chances—I think it is a fair speculation. But I desire not to enter in, and yet you turn around here with a host of men who do not pay one single shilling of tax, possessing their vote simply by reason of a dog tax or a road tax which they pay, and take away from my property.

Mr. HALE—Does not the gentleman know that in the laws upon this subject, it requires there should be not only the consent of a majority of the taxable inhabitants, but they shall also represent a majority of the taxable property?

Mr. HARDENBURGH—I do; but in that majority of the taxable property you include all personal estate, and that can be drawn out immediately, and you can never reach it by your tax, and then you leave upon me this whole 33½ per cent.

Mr. HALE—Could not that objection, if it existed, be obviated by action of the Legislature?

Mr. HARDENBURGH—I doubt very much if you build a road, if you will not let the personal estate escape, and put the tax all on the farmers. But if there is a single farmer that says, "I do not want my land disturbed, or my night sleeps disturbed by the noise of the locomotive," I say he has a right to say so, and the only way you can build a road over his property is in a constitutional way; but do not make him pay for this nuisance, or what he calls a nuisance. You pay him nothing, but you make him pay for the nuisance that he says is a nuisance. It cannot be justified upon principle. No man has ever attempted, except upon the plea that the country cannot be developed, or that great sections will not be opened, that the capital will not go it. The instant they tell me that, then I answer them by saying, "then the road has not become necessary." The instant it is, and I have never seen it fail, the capital will go in. This Susquehanna road would be built, beyond all question, by the State aid, without adopting this pernicious practice. Upon this subject I trust there will be a full and free discussion, and if there can be shown by gentlemen any reason why the report of that committee should not be adopted. It is of importance enough. Every man will admit that it should be thoroughly ventilated here, and for one I have no

doubt on the subject. Yet, I may be convinced the other way.

Mr. COOKE—The argument of my colleague [Mr. Hardenburgh] would be equally valid in the mouth of every minority in whatever political organization. Minorities every where complain that they are taxed against their will; that a policy is pursued by the majority, that is detrimental to their interests. I do not rise to discuss the merits of this question, but simply to say that I heartily concur in the position of my friend from Steuben [Mr. Rumsey] that the discussion is premature. This is not the proper place to strike at this evil, if it be an evil. Now, sir, no county, town or village has the right except by special legislative enactment to become a stockholder in any incorporated company. This proposed constitutional provision cannot be used or regarded in any other character than as declaratory of the existing law, and I therefore concur with those gentlemen who claim that the provision has no business here. These towns, counties and villages have no power now independently of legislative provisions to tax themselves for the purpose of building roads. Existing provisions conferring this power are the foundations of vested rights. Under the provisions of law as they now exist, towns have bonded themselves; they have commenced the building of roads; they have incurred expense and placed themselves in a situation where they will be seriously injured in case the government turns back upon its former action. They have been induced by legislative provisions to incur expense and taxation for the purpose of building roads. Take the case referred to by my colleague, the road in which our county is interested. A number of towns, I think all the towns through which the road is to pass (the Rondout and Oswego road) have bonded themselves, to at least a portion of the amount allowed by the Legislature, for the purpose of building that road. That money is being expended with every prospect of success in the enterprise. Pass this provision now and adopt it as a part of the Constitution of the State, and they will be precluded, if it is put in the form reported by the committee, from completing their subscription and making up the whole amount they are authorized to subscribe by the terms of the act under which they commenced. This would be entirely unfair to those enterprises that have been induced by the action of the Legislature to commence operations. The only proper way, I contend, to reach this object, if it be necessary to impose absolute prohibition or even restriction upon the right of localities to tax themselves, is to incorporate it in an article relating to the powers and duties of the Legislature. Suppose this provision is adopted in the exact language of the committee, "no county town or village existing or hereafter to be organized shall become stockholders," etc. Is there any difficulty, if the Legislature shall see fit (we know they have sufficient ingenuity), to evade it. They can create, as in the case of the metropolitan districts, a railroad district composed of several towns, and they can authorize them to subscribe for the stock, or they can divide the counties into hundreds instead of towns, for this particular purpose of allowing subscription for

railroad stock. I claim, therefore, that here is not the proper place to correct the evil, if it be one. But if it be necessary to impose the restriction, or if it is the sense of this Convention to impose absolute prohibition upon the Legislature from granting any power whatever to localities to subscribe for this purpose, let it be done in the article upon the powers and duties of the legislature.

Mr. PRINDLE—I have not given to this subject much consideration, for I was not aware that it would come before the committee this morning; but I live in a section that is deeply affected by the principles contained in this proposed amendment. It does seem to me that there is no necessity, at the present time whatever, for any such amendment as has been proposed by this committee. I would ask, Mr. Chairman, who has petitioned for any such amendment? I do not know, but there may have been petitions presented to this Convention with regard to this matter; but I am certain that there can have been but very few; I know of none. Now, sir, I am opposed to amendments of our present Constitution that have not been demanded by the people; and I will ask, sir, what are the evils that are complained of? What are the evils to be remedied? I know, sir, that evils have been talked about by gentlemen who are in favor of this section. I know that it has been said here that there are evils to be remedied and that ought to be remedied; but I have listened in vain to have gentlemen point out those evils. On the other hand, what are the benefits that have been conferred by leaving to the towns the power which they now possess to aid in the construction of railroads in this State? Why, sir, it seems to me that the simple statement of facts made by the gentleman from Otsego [Mr. Eddy], and also the gentleman from Schoharie [Mr. Krum], are themselves a sufficient refutation of any argument that has been adduced by gentlemen who are opposed to this power. Take, for an example, the action of the people in the case of the Albany and Susquehanna railroad. Who from the line of that railroad comes here to protest against this power? Who from the line of that railroad comes here to say aught against that power, or to say that they have been oppressed by the building of that road or by the bonding of the towns upon the line of that road? Not one. Who stands here in this Convention, living in a vicinity that has been taxed for the building of a railroad, to oppose it? I believe, sir, I have heard of no one. I ask this Convention to consider, before adopting this provision, what would now be the condition of all that rich country through which the Albany and Susquehanna road runs, had not the towns along the line of that railroad possessed this power to combine to build it? Why, sir, had it not been for that power, that railroad would not have been built. Those who live along that line and are benefited by that road at the present time, would never have heard the sound of the steam-whistle through those valleys and over those plains. The land would not have increased in value, as we are told it has by the gentleman from Schoharie [Mr. Krum], had

it not been for this power. Hundreds of thousands of dollars have been added to the wealth of this State by the construction of that road. And I ask you, Mr. Chairman, if it is wise in this Convention without a strong demand on the part of the people to lay its restricting or restraining hand upon the enterprise that builds railroads and adds to the wealth of this State? Is it wise to deny to the people of any locality the power to build a railroad for their convenience, and for the increase of their wealth and power? Now, I ask, Mr. Chairman, what evils can be mentioned by gentlemen of this Convention that shall outweigh the vast benefits that it must be conceded have been conferred upon the people living in the vicinity of the Albany and Susquehanna railroad, and I mention that because it is a noble example of the benefits resulting from the power vested in towns to aid in building roads. I believe that gentlemen of this Convention ought to consider this matter well before they lay their hands upon this power. We are making a Constitution which I suppose will last, if it is adopted by the people, for the next twenty years—twenty years, sir, that are to be fruitful in the growth and prosperity of this State. Let gentlemen consider the difference that will be made in the wealth of this State alone, in the next twenty years, if the people of a particular vicinity are to have no right to aid in the construction of roads by bonding their towns. I ask gentlemen who are not taxed to build railroads, and who live away from the line of those roads, to consider this matter well before they deny to those who ask it the privilege of increasing their wealth and convenience. I, sir, have not heard any complaints made by the people of this State that this power has been abused; I have occasionally heard some miserly owner of property protest against paying taxes; occasionally men will protest against paying taxes for any purpose; there are some men who protest against paying taxes for the purposes of public instruction; they protest against paying taxes for public improvements of every kind; they protest against taxes even for sustaining the life of the government. These, sir, are the only protests that I have heard against this power in towns to build railroads. It seems to me that there is no necessity for this proposed section at all. It is safe to leave this matter in the hands of the Legislature where it has been left ever since this State, I believe, was organized. What abuses, I ask, have sprung up to render this change necessary? Who has been impoverished? Who has been defrauded by bonds that are not good? Above all, I ask again, who that is interested in this matter comes here to protest against it, or what locality has sent representatives here to protest against it? Is it not safe in any particular town, county or village to leave the interests of property there to those who own the majority of the property? Will they not look to their own interests? Will not they who own a large portion of the property in the town understand their interests? Do they need gentlemen of this Convention to tell them what their interests are? I think not, sir. I think if a railroad ought not to be built, I think if it is to

be a profitless affair, the property owners of that town will see it just as quick as the members of this Convention, and will refuse to bond themselves for any such project. If they are unable to protect themselves, if they are so short-sighted, that they will rush into insolvency by building these roads, when that fact is demonstrated, the Legislature will refuse to give them the privilege of entering into bonds for such purposes. It is not necessary that a constitutional provision should be inserted to prevent it. Now, the gentleman from Oswego [Mr. Lee] says when roads ought to be built, capitalists will be ready to invest their money and build them. There have been many roads built in this State which capitalists would never have built; a road may not pay the capitalists; at the same time it will pay the farmers who live along the line of that road by an increase in the price of their land, and by the convenience afforded. Shall they not have the privilege of building a road for their own convenience? Mr. Chairman, the gentlemen complain that this power takes away private property from its owners without their consent. I say that the same principle will apply to many other things in this State. The Hudson river has been improved, and the property holders in this State have been taxed for that improvement without their consent. The canals are built, and the people are taxed to build them without their consent, and they have been taxed to build them without their consent. I ask if the same principle that is contended for by the gentleman from Ulster [Mr. Hardenburgh] would not have prevented the construction of the Erie canal, that has added millions and millions to the wealth of this State. It is certainly necessary if this section is to be passed in any shape it should be restricted, and I must confess that I am surprised that anybody, or any committee, should propose in this body a section that is to sweep out of existence at one blow, enterprises that are already engaged in like the Midland road, where the towns have gone on and bonded themselves, and where the consent of the tax payers has been given and where large amounts of money have already been paid. Will the gentlemen of this Convention sweep that enterprise out of existence? I say it would operate as a fraud upon the people living along the line of that railroad and who have invested their money in it, as they have to some considerable extent. The Legislature of this State has passed a law by which and upon which they have proceeded; they have expended their money; they have acted upon it, and when the State turns round, and deprives them of all the benefits that they are to derive from their action, it will operate as a fraud upon them, upon sound principles of law and equity, and if this section is to pass at all, as I believe it should not, certainly it should be amended so as not to affect enterprises, already on foot.

Mr. AXTELL—I suppose in this State, it is well settled that only in rare instances can railroads be built by private capital, so that in localities where they need railroads the localities must build them, and I mean by that, not merely private capital in those localities, but the roads must be built by the property in the vicinity of those roads. There may be excep-

tions to this, but they are very few. The roads that have been built by private capital in this State, have not proved remunerative to the capitalists or to the original stockholders; it is well known that there is but one road of any length in the State, that has proved remunerative to the original stockholders. The capitalists who built the roads have generally sunk their money. It is also well known to the gentlemen of this Convention that in the great railroad movements in this country, now in progress, and that have been recently completed, large grants of land have been made to the companies by the general government, and without this aid these roads could not be built and would not be built. These being the facts, I regard this section as a prohibition against the building of a railroad in any portion of the State where private capital cannot be secured to build it. Take the section of the country which I have the honor in part to represent, as stated by one of my colleagues on the floor, there is a plan or scheme on foot to build a railroad; after persistent efforts, aid has been secured from the State, to a certain extent, to build that road; if the road is built at all it will be by the property along the line of the road. Arrangements have, to a certain extent, been perfected, or they are in process of perfection, but not completed. If this section is adopted, a stop will be put to the movement of the building of that road, and there will be no road running through that region of the country, and the resources of that portion of the State will remain undeveloped. I think if we were to strike out all after the word "No," in this section, and substitute something like the following, we should reach the result that would be attained by the adoption of this section, "No railroad shall hereafter be built in this State longer than forty or fifty miles." That would be about the result that would be reached by the adoption of this section. I think this question can be safely left to the people of the localities to be affected. From what I have observed during the past few months, I see that the people are disposed to discuss these questions, and are not disposed to permit the towns to be bonded without having given careful attention to the subject, and that no mere visionary schemes can obtain or receive the sanction of the people. The people of the towns do not permit themselves to be bonded without having ample discussion on the subject, and I believe it is wise to give this attention, so that the people shall not allow themselves to be inveigled into schemes that are not to be carried to a successful issue; but when the people, after fair discussion of the subject, have decided that the benefit to be derived will compensate them for the risk they run, I think they should be allowed to make the investment. I shall, therefore, support the amendment of the gentleman from Onondaga [Mr. Alvord], but I would prefer to have the entire section stricken out.

Mr. SMITH—There is one point to which I wish to draw the attention of the committee and gentlemen who favor the bonding of towns. It seems to me that it is an invasion of the right

of private property, and I have as yet heard no answer to that position from any gentleman who has addressed the committee. It is understood to be a fundamental principle that private property shall not be taken for public use without just compensation. It is incorporated in our present Constitution, and I believe it is in every Constitution in the Union; if it is not it ought to be. If you permit a town or county to loan its credit for private enterprises, you do more than violate this principle—you allow private property to be taken, not for public use without compensation, but for private use without compensation.

Mr. PRINDLE—Will the gentleman allow me to ask him a question? Have not the courts decided that it is for public use?

Mr. SMITH—I will not undertake to say whether they have or have not, but if they have it is not easy to understand on what principle they have made that decision. By what process of reasoning, or by what trick of casuistry, can it be shown that taking private property for the use of a private corporation without compensation is within the spirit of the Constitution permitting private property to be taken for public uses on making compensation? If any gentleman can explain it I shall be glad to hear the explanation. I rise partly for the purpose of asking information on this point, as it has not been explained satisfactorily to my mind.

Mr. HAND—If this State had given to those companies a sum raised by taxation, I would ask whether it does not involve the same inconsistency and violation of principle?

Mr. SMITH—Perhaps it does, but that does not justify the practice, if it is wrong. Two wrongs do not make a right.

Mr. HALE—Will the gentleman give way for one moment? I wish to make a suggestion in reply to the inquiry of the gentleman from Fulton [Mr. Smith]. I will not do it, however, if the gentleman prefers to go on and occupy his own time in his remarks.

Mr. SMITH—I have no objection.

Mr. HALE—I would ask whether a railroad built especially through a country now without facilities is not in a certain sense a public enterprise, whether the mere fact, that it is owned by stockholders and is legally private property is inconsistent with the other fact that it is an institution for the benefit of the public, and by which the public are to be benefited and I would ask whether there is, so far as its effect upon the public interests are concerned, any distinction between a bridge, as suggested by the gentleman from Broome [Mr. Hand], built by taxation, and which nominally belongs to the public, and the railroad which, although built by a private corporation, is mainly for the benefit of the section through which it runs?

Mr. SMITH—The gentleman's question has multiplied somewhat, but I will answer him, if I understand the scope of his inquiry. It often happens, doubtless, that these private enterprises operate as a public benefit, and it often happens, on the contrary, that they are disastrous; but an incidental public benefit, resulting from a private enterprise, does not bring it

within the constitutional rule, and the principle of fundamental right, by which you shall not take private property for public use without compensation. Whatever the courts may have decided, the taking of private property for railroad purposes in the manner inhibited by this section is not, in my judgment, a public use within the spirit of the great fundamental principle which protects private property. A railroad company is a private corporation, and has always been so considered, although it may operate incidentally as a public benefit. But whether public or private, the practice which this provision interdicts is wrong, because it takes private property without compensation. But who shall decide whether a projected enterprise will or will not prove a public benefit? The majority of tax payers assume to decide the question, and arbitrarily tax the balance of the town, and take their money out of their pockets without their consent and without compensation. The minority may not believe it to be a public benefit, they may not agree with the majority who say that it will operate as a public benefit, but, whether they believe it or not, they are forced to contribute to an enterprise which their judgment and interests condemn. This is not just, not democratic, and not in accordance with the spirit of our free institutions. It is absolutely taking the property of those whom you tax for the benefit of private corporations without their consent and without any compensation. It was suggested by the gentleman from Chenango [Mr. Prindle] that the appropriations for the Hudson river and for the canals are all of a similar character. I would ask the gentleman whether there is not a distinction between these public highways which are owned and controlled by the public, and private enterprise which are originated and managed by private persons? It seems to me there is a plain distinction. It is said by gentlemen that it is safe to leave this matter to the Legislature, but we see in the history of the past that it is not safe to leave it to that body. If it be an invasion of private rights, of a great fundamental principle, to take private property for this purpose without compensation, then the Legislature has repeatedly made this invasion, and should not be intrusted with the power. The Constitution should protect the rights of all. It is said by gentlemen, also, that the majority of the people in the localities can decide these enterprises for themselves and decide correctly. Perhaps they would, and perhaps they would not. The history of other States shows that many of these enterprises are disastrous in the extreme. But suppose the majority do decide correctly, I claim under the Constitution the right to decide for myself how my property shall be used. I claim that I shall not be forced into an enterprise that my judgment condemns because my neighbor may think it expedient. Every man in this country, under our free government, has a right to decide for himself for what enterprises he shall appropriate his property. But there is a single suggestion in regard to the mode of reaching this difficulty which I wish to make

before I sit down. I do not know but this is the right way, but the suggestion made by the gentleman from Steuben [Mr. Rumsey] struck my mind with some force. He proposes to reach the difficulty by inhibiting the Legislature from authorizing towns and counties to bond themselves or loan their credit for these private enterprises. This section under consideration is for the purpose of organizing the towns, counties and villages, and prescribing their ordinary and general powers. As I understand it, the rule has been correctly stated by gentlemen here, that counties and towns do not now possess such power. If this section be adopted, would there not be danger that it might be construed to be a mere declaration of the ordinary and general powers of towns and counties, still leaving the paramount power in the Legislature? It is true this section provides that towns and counties shall not be permitted to bond themselves, but the courts may hold that this merely prescribes their ordinary inherent powers, and that the Legislature might still authorize them to do what we are seeking to prevent. Would it not be better to have a provision like that suggested by the gentleman from Steuben [Mr. Rumsey] inhibiting the Legislature from conferring the power upon towns and counties? Such a provision would strike at the root of the evil, and leave no room for construction or doubt. It is with some reluctance that I have made these remarks, because I know of certain sections of the State where these enterprises have proved beneficial, and the representatives of those sections in this body quite naturally feel sensitive on the subject. If I felt at liberty to depart from the great fundamental principles of our government, it would afford me pleasure to favor the views of these gentlemen; but we are making an organic law for the whole State, and for all the people; we are not legislating for the county of Schoharie, for the benefit of my friend from that county [Mr. Krum], or my friend from Chenango [Mr. Prindle], or for the locality in which my friend from Clinton [Mr. Axtell] resides. We are constructing a Constitution, and our first care should be to recognize and obey great fundamental principles, and to protect the natural and inalienable rights of the people. If we do this, localities will take care of themselves, and the prosperity of the State be placed upon a sure and permanent basis.

Mr. VAN CAMPEN—I do not desire to tax the patience of this committee, but I wish to state that there is a railroad project which is organized, going out of the city of Buffalo to the coal mines of McKean county, Pennsylvania. I am very well satisfied that if you shall submit to the towns along the line of that railroad the question whether they will be bonded or not to the amount they think expedient, you can obtain two-thirds of the tax-payers of those towns to bond themselves for the purpose of aiding in the construction of that line of road. I think there are some towns in the county of Cattaraugus, that the real estate therein would be doubled in value by the completion of that line of railroad to the city of Buffalo; the lumber alone would be doubled in value by the

nearness of that market, or the short distance by which they could reach the city of Buffalo. On such principles as claimed by the gentleman here in regard to the provision before us, I ask, if you shall make it absolute that the people of those towns, if, say two-thirds of them desire to bond themselves for that purpose, they shall not do so. I trust the Convention will not put into the Constitution any such provision, but, I am in favor of inserting a provision in the Constitution to guard the people in regard to these things, and, I think, if such provision shall provide that it shall require two-thirds of the tax payers in every town, that your protection is sufficient. If the case is so doubtful or, if it is not clear enough to obtain two-thirds of the tax payers of the town, I think the town had better not be bonded. With that provision I shall be in favor of the provisions of the section.

Mr. LUDINGTON—Mr. Chairman, I do not rise for the purpose of going into a discussion of the general principles involved in the section under consideration. Although if I were to treat it as an original proposition, I should hesitate a long time before giving it my dissent, I could not so lightly appreciate a system of building railroads which has so generally obtained in Iowa and other Western States, and without which that vast fertile region would comparatively have remained undeveloped, so that to-day one railroad connecting us with the West would be sufficient to accommodate all the travel and freight between the East and the West. It was by the system which this section ignores that nearly all the lateral roads and some of the main lines at the West were built. The citizens of Cleveland bonded themselves and took stock to build their road to Cincinnati, the bonds have all been paid by the earnings of the road, and they hold the stock which never cost them a dollar. The same is true of many other roads in other sections of our country. The city of Albany bonded herself twenty years ago to build the Stockbridge railroad; the bonds have been paid without the cost of a dollar to the city; she has recently, after full experience, bonded herself again to the amount of \$1,000,000 to build the Albany and Susquehanna railroad. Go, sir, where any roads have been built on this plan, and ask their bonded builders if they desire their roads abandoned on condition that their bonds be canceled, and learn a lesson from their negative responses. It is, in short, the only way such improvements in new regions can be constructed. I have ever belonged to that party in this State which has been in favor of a liberal system of internal improvements. I have always favored all the appropriations by the State that I now can call to mind for the improvement and enlargement of the canals of the State, and nearly all the appropriations that have been made for the construction of our railways, because I cannot perceive any distinction between the character of a railroad owned and held by a private corporation and a railroad owned and held by the State. The courts hold them alike to be public improvements. I believe, sir, it is to that system to which I have ever been attached, of making

just and reasonable appropriations of public moneys for these public uses that we are in a large degree indebted to that material development and improvement which has distinguished our State as the Empire State of the Union. And although, sir, I occasionally hear some of my friends with whom I have had the pleasure of long political association, inveighing against further appropriations in regard to the improvement of some of our great canals, yet, sir, I have not gone so far as to say that, if it shall, at any time, be demonstrated to my mind, that it will be for the interests of this great State, and of the whole people, that it will still tend to the further development of its resources, to make additional taxation upon the resources of the people of the entire State in the furtherance of these improvements, I would be unwilling to take the responsibility of favoring it. But now especially, sir, I believe, that if a locality, upon due consideration of its citizens, determine that it is to their interest, as a locality or community, to construct some public work, whether that work be a bridge, or a railroad, or a canal, and they had determined to make that construction or improvement, by means of bonding that section, or lending its credit, or in any other way by which it shall become chargeable for the payment of the cost of its construction, I do not regard it as legitimate or within the provision of the sovereignty, for the people of this State, to say that they shall not have that privilege. It is their concern and not the State's. Lay the map of the State of New York before you, and you will find that there lies a section of territory within the limits of this State, between the Hudson and Delaware rivers, or between the New York and Erie and Central railways extending from the northern line of the State of New Jersey to Lake Ontario—a territory of from sixty to one hundred miles in width, and two hundred in length—a territory unsurpassed in the wealth of its timber and agricultural productions and resources—a territory, sir, which, up to this time, has been comparatively isolated from all the great thoroughfares and markets of the State—a territory within which is included the counties of Onondaga, Madison, Cortland, Otsego, Schoharie, Chenango, Delaware, Sullivan, Ulster and part of Orange, covering an area of over 5,000,000 acres of land. I refer only to those in which the Midland railroad is to pass. Sir, we have not asked the Legislature to do by us as it has done by the inhabitants living along the Susquehanna and other railways in the State, in times past, to appropriate seven hundred and fifty thousand dollars of the people's money, to be raised by tax upon the property of the State, for the purpose of aiding us in the construction of a railway, by which we could enjoy equal facilities with our sister counties of the State, for travel and commerce; but we simply asked, sir, that the Legislature of this State would allow us to build a railway by bonding the towns through which it is to pass, and at our own expense, which, at its last session, by enactment, allowed us to do. Under that act we have proceeded in good faith, with assurances of capital in

bonds of towns and cities, now exceeding \$5,000,000; and which will be greatly augmented when locations shall be more fully determined on. And now this Convention proposes to arrest us in this great work—the noblest of any modern enterprise in this State, and which promises to be the most beneficent in its results. Previously thereto, subscriptions to a large amount had necessarily been made under the act authorizing the organization of railway companies, and sufficient to enable us to organize the Midland railroad. The articles of association had been filed in the office of the Secretary of State, and on such subscriptions to stock, the requisite amount of per centage had been paid in for the purpose of completing our organization. We have caused surveys at a large expense to be made from the subscriptions to the stock. Surveyors are now at work; the road in most of its parts has already been located; and we trust that if this Convention shall not interpose to prevent us in the completion of this work, as thus begun, within less than two years from to-day another iron band will connect the city of New York with the great lakes of the West. It is for this reason that I more especially favor the amendment of the honorable gentleman from Onondaga [Mr. Alvord], by which we may be saved from loss of all that we have thus expended, and by which we may be enabled to go on at our own expense and complete this great enterprise—to construct this road which shall not only give to the people of that neglected portion of the State an easy means of getting out and in, but a railway that shall tend, in a large degree, to develop the slumbering resources of this entire section, by adding to its wealth, population and power. Objection is made to bonding towns in aid of private enterprises. I have shown that not only the courts but common sense declares railroads to be public enterprises—because it can be characterized as none other than a great public enterprise. I need not say, what must appear to every gentleman in this Convention to be an obvious truth, that the people, having thus subscribed their money, and having bonded their towns to the extent of many millions, and accomplished so much toward the completion of this much needed improvement, cannot but feel disappointed and indignant at any attempt to strangle this enterprise and crush their hopes. Sir, if you forcibly take from us this vested right by constitutional inhibition, I need not say to you, and to the gentlemen of this Convention, that that act will raise such a storm along the line of this contemplated railroad, and meet so generally and justly the condemnation of the people, that the Constitution which we may frame, with such an inhibition in it, would, on its submission to the people, scarcely receive one-tenth of the votes out of seventy-five thousand along that line. This, sir, is a matter of great importance to us. It is a matter that has cost too much labor already; it is a matter that has cost too much expenditure to be wrested from our hands. It is for that reason, therefore, sir, that I demand that this great outrage shall not be committed upon this portion of the people of

this State, who have ever been willing, and who are still willing to bear their just proportion of the necessary burdens that are calculated to promote the interests of this great State, to develop her resources and to make her continue to be the proudest and noblest in the sisterhood of commonwealths of this Union. I trust, therefore, sir, that, if the whole section is not rejected, the amendment of the gentleman from Onondaga [Mr. Alvord] will be accepted by the Convention, and the people, whose interest I in part represent, saved from threatened humiliation, injustice and wrong.

MR. S. TOWNSEND— I will offer no apology to the committee for taking a few minutes in the discussion of this question. I consider that it involves some of the most important principles which should receive the attention of this body. It is the question of taxation, involving the inquiry where does sovereignty lie? The gentleman from Steuben [Mr. Rumsey], made an inquiry of the gentleman from Oswego [Mr. Lee], I believe, as to where the inherent power of legislation lay. The gentleman from Steuben [Mr. Rumsey], differed from him, believing that the people have conferred that power exclusively upon the Legislature. I hope that this point will be fully discussed; and while I believe that there are other gentleman upon this floor better able to discuss it than myself—I would say that I believe in the principle enunciated in the Constitution of 1846. The proposition now before us—undertaking to prevent the Legislature from doing certain things, would impliedly surrender the sovereignty to them. I should have liked at some period of this session, to have seen brought forward—as was early in the Convention of 1846—an attempt to delegate expressly these powers which the Legislature should exercise. Then under the article providing for amendment, after the approval of two Legislatures, sustained by a popular vote, which we shall undoubtedly continue in the Constitution—what further power was found necessary could be granted from time to time. Under that view, sir, I am opposed to this section, and am in favor of leaving this power in the hands of the people. I do not doubt they would understand their interests as well as the Legislature, or even a Constitutional Convention. I, for one, think that matters of local interest are better understood by localities. Gentlemen here from such localities have sufficiently shown the necessity of adopting the amendment of the gentleman from Onondaga [Mr. Alvord], if they have not shown the necessity of expunging the section. That great evils have arisen from the extravagant and improvident expenditure and liability incurred for towns and counties, there is no question whatever. But partial evils, we are told, is universal good. Upon what principal should we surrender a good because it may be abused? A recollection has occurred to my mind in regard to legislative interference in localities, connected with the city and county of New York. At the period of 1840-42 there was a crisis in the affairs of the State, which Mr. Van Buren, in his "Reminiscences of Public Life," says exceeded

the national crisis that General Hamilton has had so much credit for surmounting, and pays a just tribute to those statesmen of the past, Michael Hoffman and Azariah Flagg. The national expenditure (in 1790) (the embarrassment was the matter of debt) was then about six hundred thousand dollars—as much as during the last war it cost to keep a frigate afloat. At that period, 1840, the reports will show that the State treasury was indebted to financial institutions of the city of New York almost exclusively, to an extent approximating four millions of dollars, on demand. The State credit—issued improvidently to the Erie railroad and other companies, in a far more injurious form than the gentleman who has just taken his seat [Mr. Ludington] has described—was being sold in the city of New York at twenty-five or thirty per cent discount. The city of New York came up at that period to ask permission of the Legislature to issue her bonds, which, from the excellent manner in which she managed her credit at home and abroad—even in the face of the demands of other needy borrowers—she was enabled to dispose of her five per cent bonds at equivalent to par. The city of New York under the forms and requirement of law, was compelled to come here and ask permission to issue four millions of dollars to carry on that great public work, the Croton Aqueduct. The expenditure at that period had only amounted to a million and a half or two millions of dollars. The State officers, as I happen to know, opposed this application on the part of New York, saying that all the spare capital was needed to rescue the State credit. Even the New York delegation on that floor, almost a majority of them, were willing to arrest that great beneficial work in its progress at the suggestion of a State officer. But better counsels prevailed, the law was passed and our locality obtained the money at par. This is an illustration of the danger of central interference or of accepting the idea for a moment, that these bodies are any better judges of what is needed for the interest of localities than the localities themselves. I had occasion the other day, when we were considering the question of the exercise of legislative powers by the boards of supervisors, to call attention of the Convention to a matter that had been completely overlooked. Without any authority of the Legislature, they raised nearly forty millions of dollars, on the credit of the counties of this State, for a very laudable and patriotic purpose. I have no details to offer; I have merely thrown out these suggestions, to show why I shall vote in the first place, for the amendment of the gentleman from Onondaga [Mr. Alvord], in order to throw no obstacle in the way of carrying on enterprises in those localities, and finally for expunging the section.

MR. LANDON—Several gentlemen have opposed the principle of towns giving bonds for the purpose of building railroads, upon the ground that it is an unauthorized invasion of the rights of private property. They claim that these railroads are private property, and that the private property of a citizen can not

be taken in order to build them. The difficulty with the argument is, that they make a mistake. Railroads have been adjudged in repeated adjudications in the highest tribunals in this State to be public improvements. If gentlemen wish to find authority upon that point they can find it in the case of *Beekman v. The Schenectady Railroad Company* (3 Paige, 45); and the doctrine there laid down has been followed ever since. Why, sir, all over the State whenever a railroad is to go through your property, the railroad can take that property upon the principle that private property may be taken for public purposes. If the Legislature chooses to levy a tax upon private property for the purpose of building a railroad, they proceed upon the ground that it is a public improvement.

Mr. RATHBUN—Can a railroad take a man's farm without paying for it?

Mr. LANDON—No, sir. Private property cannot be taken for public purposes without just compensation.

Mr. RATHBUN—There is no compensation in these cases.

Mr. LANDON—But the courts have held that these railroads being public improvements, the public can be compelled to pay for their construction. That is, they have sustained this principle of taxation upon the theory that railroads are public improvements, and that every man may be compelled to contribute toward the public benefit. That the individual right must yield to the public right; that the public right is paramount to the individual right. I do not think there is any question as to the legal aspect of the case. Gentlemen complain of the exercise of this authority, because sometimes it taxes personal property and not real estate. The gentleman from Ulster [Mr. Hardenburgh], is willing to concede, that if this restriction can be applied to real estate only, and not touch personal property, then the objection to this system would in part fail.

Mr. HARDENBURGH—I trust the gentleman will correct his statement. I made no such statement, and I have lived long enough to take care, when men come to me, to refuse to contribute to any such purpose. I said that it would obviate some of the objections that I raised.

Mr. LANDON—I understood the gentleman wrongly then; I understood him to advance that doctrine. But the gentleman did say—and I believe other gentlemen followed him in the same line—that so long as there was one man in a town who was unwilling that his property should be taxed in order to build a railroad, that objection ought to be sufficient to prevent the taxation of the property of the town. Why, sir, in every town there are men—old fogies, I may call them—whose misfortune it is that they were not born a thousand years ago, and when we want a new bridge or school-house are always interposing their veto. Is it right, sir, that the enterprise, the resources and the wealth of the country shall be restricted by this class of men? I think not, sir. I think that inasmuch as these men, who live along the line of these railroads which we propose

to build, or whose children may go to the school-house that we propose to erect, will be benefited by these public improvements, they may well be compelled to pay their portion toward their erection and maintenance. Otherwise the resources of this State may remain undeveloped, and public enterprise be restricted. The man who is unwilling to pay his proportion of the tax, is willing that I shall pay mine; but he can only ask me to subscribe upon the theory that my property will be benefited. But what benefits me benefits him just the same. He asks that I shall pay, and that he shall be exempted from payment, that he shall receive the same benefit for nothing that I pay for. There is an injustice in that sort of thing. There is no manner in which these railroads can be built, which are constructed simply because they are public improvements, that so fairly and so equally distributes the cost of their construction among those who will receive their benefits, as this system of taxation. But I am in favor of imposing sufficient and proper restrictions to the exercise of this kind of power. We have had experience enough in such matters, to induce us to impose wise and proper conditions, upon which this power is to be exercised, to have them clearly defined, so that the citizens of a town may know when the conditions have been complied with, the compliance with which gives rise to the exercise of the power. I therefore am in favor of such amendments as shall clearly and sharply define the conditions of this power; and thus prevent some of the abuses which have thus far discovered themselves, but I will not consent to destroy the power.

Mr. RATHBUN—I am in favor of the proposition prohibiting the Legislature from authorizing towns, villages, cities or counties from incurring any obligation, or exercising any power or authority, in reference to the construction of railroads, or other enterprises by which the people of those localities can be subjected to taxation for that purpose. In my judgment there is no greater fallacy in the world than that which has been argued and re-argued here, that because the construction of a railroad through a town is considered by a majority of two-thirds of the people of the town to be advantageous to the town, therefore the two-thirds that are influenced by that feeling have a right to act upon it in opposition to the feelings and judgment of the other one-third, and to assume large obligations, which rest, not upon themselves, but also upon those owning 33 per cent, or one-third, in value of the property, who can see, or think they can see, that the thing will be a failure, that it will not pay, that it is unwise, that it is imprudent, and one in which they would not invest any money; that the two-thirds, if you please, or a larger majority, shall have a right not only to go on, on their own account, and take in the minority and compel them to become liable, and pledge their property and assume obligations which they in their good sense know better than to assume; making them chargeable with a tax, and making them pay according to the estimate which they have made of the value of the property, and mortgaging (if that is the proper term) the property of every

inhabitant of the locality to do an act for the person who would not consent to contribute to the amount of one dollar. To say here that this is honest, that this is just, and that it is right, is saying no more and no less than that two-thirds of the people have a right to rob the other third. It is just as honest in the one case as in the other. But gentlemen say it is a great public benefit. It may be; and it may be a great public curse. You cannot tell which until the experiment is tried. Those who are zealous in such a case have a right to go on to the full extent. They have a right to invest all they have. Nobody will object to that. And gentlemen who undertake to enlarge that right of a part of the people, and not only justify the part that are desirous to go on, but to authorize them to make others plunge headlong with them, assume to do a little more than properly belongs to them.

Mr. BICKFORD—Would the people have a right to build a railroad, if in the estimation of a large portion of the community a railroad would be a curse? The gentleman said a railroad might be a curse. He insists that the people may build it although it turns out to be a curse. I understood him to say so.

Mr. RATHBUN—The gentleman did not exactly hear what I was talking about. I have not used the words in reference to a railroad that it was a curse.

Mr. BICKFORD—He said that it was not sure, that a railroad would turn out to be a blessing; that it might turn out to be a curse, but that individuals might go on and build it notwithstanding.

Mr. RATHBUN—The gentleman made a slight mistake in his understanding. I was talking about the project of building a railroad, and I said that while every zealous man might think it a great project and magnificent scheme, others might think it was a great curse, or it might turn out to be a curse. It might not be the best route, and there might be a failure to build, and in order to show the gentleman how it operates I will explain—

Mr. BICKFORD—The gentleman took the position that individuals might go on and build it notwithstanding it would be a curse.

Mr. RATHBUN—At their own expense, to be sure. Every man has a right to go on and build a railroad—to try the experiment—and fail. Nobody has a right to find fault with him; but if he wants to try an experiment of that kind he has no right to insist upon taking his neighbors along with him when they say no. They have a right to ride or go on foot. I take the ground taken by other gentlemen here, that when there is one man in a town who does not desire to go into a certain enterprise the rest have no right to force him to do it. I take the ground fully that no man has a right to dispose of the property of another without his consent. It is not taking it for public uses; it is taking it for the benefit of a corporation—compelling the people to pay the taxes, and often with nothing to show for it.

Mr. BICKFORD—Will the gentleman allow me another question? When the State gave three millions to the Erie railroad was that for public uses or private uses?

Mr. RATHBUN—When the State gave three millions to the New York and Erie railroad it was given to the corporation.

Mr. BICKFORD—Was it not upon the ground that it was for public uses?

Mr. RATHBUN—You can always find the best men in the world, while in the Legislature, willing to grant money in favor of corporations. In the first place, gentlemen will remember that it was loaned to them upon adequate security, upon a first mortgage of the whole property, and was to be the first to be paid.

Mr. S. TOWNSEND—Was it adequate security?

Mr. RATHBUN—Wait until I answer one question first. Afterward, after much labor in trying to get a railroad built, they finally came back to the Legislature and said: "Why, we have been taxed to build the Erie canal, and we have never had any benefit from it; and we are entitled to some assistance from the State." And so they fooled the northern part of the State and persuaded the Legislature to pass a law giving them three millions of dollars, when the canals built themselves.

Mr. BICKFORD—When Jefferson county, for instance, was taxed on account of the Albany and Susquehanna railroad was that or was it not taking the private property of the people of Jefferson county for private uses?

Mr. RATHBUN—Exactly.

Mr. BICKFORD—Then it was unconstitutional.

Mr. RATHBUN—Has the gentleman any railroad in view that he would like to have built by bonding towns?

Mr. BICKFORD—Yes, sir.

Mr. RATHBUN—Ah! I thought so. That answers the whole case then. We understand one another. I am against this being done unless you have got the people's permission. Those who have, have a vested right. We do not propose to interfere with anybody's right wherever towns have entered into the delightful state of wedlock with a corporation to build a railroad, they have a right to enjoy it. I hope that an amendment will be put into the Constitution which will prohibit this kind of thing hereafter. My friend need not be alarmed; he may be perfectly satisfied. These towns having executed the bonds are bound hand and foot. I hope that the railroad will pay, so that they will never feel the bonds. But, sir, in the town where I live they indulged in the luxury to the extent of one hundred thousand dollars, ten or fifteen years ago; and we are under bonds for the whole amount of the principal; and we pay interest—seven thousand dollars a year and the cost of collection. It is one of the most delightful positions that a town was ever in, in the world; and I insist upon it, if gentlemen have any doubt about it, get your towns, get your cities and villages to build railroads: and when your bonds fall due, raise the money to pay interest, from year to year; and look for the railroad all over the country where it was to run, and find it is not there. That is the way we are—

Mr. PRINDLE—I desire to ask the gentleman a question. Did he not sign the consent for a road in his locality?

Mr. RATHBUN—I did not. I am one of the submissive kind; I always yield. And although I think this kind of law is a great outrage upon public rights, yet, as one of the community operated upon by it, I submit. I always yield submission to the law everywhere.

Mr. BELL—Will the gentleman allow me to ask him a question? Does the gentleman from Cayuga [Mr. Rathbun] live on the line of the Central railroad?

Mr. RATHBUN—Why, certainly. I live on what is called the switch. [Laughter.]

Mr. BELL—That answers his argument, then.

Mr. RATHBUN—That answers your question.

Mr. BELL—The gentleman is not out in the cold in that respect. You enjoy railroad accommodations.

Mr. RATHBUN—We are out in the cold. We have to pay three or four dollars a ton more for coal to warm us than our neighbors have. If that is not being out in the cold, I do not know what it is. [Laughter.]

Mr. BELL—Did the gentleman never unite with the people of his county in an application to the Legislature for a State donation to build a road from Sodus bay to some other place?

Mr. RATHBUN—Never.

Mr. BELL—Did not his town make application for State aid?

Mr. RATHBUN—I cannot tell you. I take no part in such things. I never asked a dollar in my life for any such purposes, and never received a dollar.

Mr. BELL—Did not the inhabitants of the gentleman's county ask a donation from the State of \$300,000, to build a railroad through Cayuga county?

Mr. RATHBUN—I do not know that they did. I understand that there were representatives of this railroad which has been referred to asking for assistance by some other mode (my friend from Chenango [Mr. Prindle] was represented) to obtain enough money to make up \$750,000, which would have helped to build this railroad, that he says would not have been built if the towns had not been allowed to bond themselves. It would be good if towns could be bonded in that way, and the State come in and pay \$750,000. That is a good idea. But who pays that? Loaded down with taxes, and crushed into the very earth, we are to have piled on \$750,000 on one road, and \$250,000 on another road, in addition to the burdens which are crushing the people of this State. I hope this will end by and by, and I apprehend this Convention is going to put an end to all this kind of thing. We have had enough of this sort of legislation. But, says the gentleman from Chenango [Mr. Prindle], the people have been taxed to build canals. Aye, sir, so we have, very considerably. But it is unfortunate that the gentleman should make allusion to taxation for canals; for that very same Chenango canal, which was intended for some useful purpose, I believe, and which has done very little more than to drain the public treasury, has been a burden upon the public—

Mr. PRINDLE—And which has never been finished.

Mr. RATHBUN—And which has never been finished—still progressing, still relying upon the strong backs of the people of the State to keep pushing that Chenango canal, which is unfinished, and will be until the day of judgment; and if it was finished would not be worth a row of pins.

Mr. KRUM—Are you in favor of the enlargement of the Erie canal?

Mr. RATHBUN—I have not made up my mind. I want to hear the question settled where the money is to come from. Gentlemen need not be apprehensive about my going into debt a great deal. I am not one of that kind. I do not intend that the gentleman [Mr. Krum] shall have power to get any more money for the Susquehanna railroad, or for any of those northern roads. I desire to stop the whole thing. I came here—because I was sent. I came with a full determination to do all I could on that subject. The gentleman from Chenango [Mr. Prindle] wanted to know who there was here that had any reason to complain of this bonding of towns. I do not complain much. We are only about \$200,000 out of pocket, and nothing to show for it, in my county. We make no complaint about it; it is lost and gone. Four towns went in \$25,000, and they thought it a very neat operation. Our town went in \$100,000, and that turned out to be very neat. But we had not got enough; we are in again. Now, to show gentlemen that I am not hostile to these things being done, we are going to build a railroad from Lake Ontario which is called the Southern Central railroad; and I hope it will be built; I think it will be a paying road. The city in which I reside have gone in \$500,000 in that—bound hand and foot again. I hope it will turn out right. Whether it does or not, we are tied, and there is no escape. There are towns along that road that entered into the same bonds or into bonds of a similar character, and for the same object; and I hope they will be all safe from the liability which they have incurred and that the road may be built.

Mr. LUDINGTON—May I ask the gentleman whether he would be in favor of a constitutional provision here to stop stealing from the State, through the canals, two millions, and have half of it given to the railroads?

Mr. RATHBUN—I cannot agree with the latter part of that arrangement. I go in for stopping stealing anywhere; and there is nothing in the world would do me so much good as to see a rogue who has been stealing hauled out by the ears and exposed to the public gaze. I have always been delighted with that kind of spectacle more than with any that ever traveled the country in the form of a show. I am for stopping all that kind of plunder; and if the gentleman [Mr. Ludington] will vote with me in my endeavors, if we do not stop the rat holes so that there will be none, it will be because the plunderers will be a great deal more ingenious than the Convention. I have said a great deal more than I intended when I arose. I had no idea of going so far as to make what might be called a speech, but by the antagonism of my friends around me I have been induced to talk a great deal longer than I desired.

Mr. HADLEY—I would like to ask the gentleman whether the towns in his county did not repudiate the bonds after they became due.

Mr. RATHBUN—Lord! yes; to be sure they did [laughter], all except my town; my town didn't do that. The towns said they had been defrauded; that they had been cheated; that the bonds were never made by consent of the taxpayers. And although the papers were on file, and affidavits to show that the persons subscribing, actually subscribers, were a majority of the taxpayers of the town, they raised a large amount of money and fought the bond-holders—in the town where the holders of the bonds resided—in the town where the bonds were given—men who bought the bonds and paid the face of them. The people were rich and the bonds were good. They beat them in the court of appeals, but there happened to be another court in which these bond-holders brought actions, and the bonds were held to be good in the United States courts and the repudiators will have to pay.

Mr. KINNEY—I rise to a point of order. The remarks of gentlemen are in such a low tone that we do not hear them back here, and hence we do not get the worth of our money from this entertainment.

Mr. RATHBUN—I hope the gentleman will not find fault with my not talking loud enough.

Mr. KINNEY—we do not hear the questions that are asked, and consequently we do not see the point of the answer.

Mr. RATHBUN—Well, there is not much point in a good many of them.

Mr. BELL—I would like to ask the gentleman a question. Does the gentleman from Cayuga [Mr. Rathbun] represent a majority of the tax payers or the inhabitants of his town on this floor on this subject?

Mr. RATHBUN—in regard to contracting liabilities?

Mr. BELL—in regard to affording aid to those roads that cannot be built by private enterprise.

Mr. RATHBUN—I don't know that there is a man in my town or in my county who is in favor of lending the State aid to any railroad in the State except our own [laughter]; and I guess they will all be in favor of that. That is the best answer I can give on that subject.

Mr. BELL—I would like to ask another question. Is he in favor of loaning the credit of the town in the way of bonds?

Mr. RATHBUN—I hope not. They got a majority in the town of Auburn in favor of lending \$500,000, and it took about a year to get it. How it was obtained I do not know. I never went with the people that got the names to those papers. Whether right or wrong I cannot tell. I know in the outset it looked as though they could not get anything, but they have succeeded, and they are good bonds, and they will be paid; there is no doubt about that, and the people that buy them are certain to have the interest and principal paid. That is the way we do business there—no repudiation about it. So that if you find anybody who wants bonds issued by the city of Auburn to build a railroad called the Southern Central, you may say to them that the bonds are good—there

is no mistake about that—and are worth one hundred cents on the dollar.

Mr. BELL—This question is one of great importance, and I hope the Convention will not be weary of hearing it thoroughly illustrated and discussed. It is one that involves, not only a principle, but it involves the interests of the people of the State. It only provides for those roads where private enterprise is not sufficient for the task; it will not be applied to roads that are remunerative, whose stock will pay a large dividend. It is only for the purpose of developing the resources of sequestered regions, where private enterprise is inadequate, where there are not sufficient resources on the line of a road to build it. In such cases we must settle the question here or leave it to the Legislature to determine what principle shall prevail on that subject. Shall we deny to those sequestered regions any outlet or any railroad whatever; or shall we say that if the Legislature see fit it may give them the privilege of bonding their towns in sums sufficient—not exceeding a certain proportion of the assessed value—to enable them to build these roads? I am of the opinion that we should adopt the latter course, we should leave this whole question to the Legislature, and not encumber the present Constitution with any provision on that subject whatever, leaving it to the development of the future. This Convention, however wise (and it is composed, I admit, of very wise men), cannot look through the course of time and determine what may be the necessities of the people of this State on this subject for the next twenty years. Our rules require that we should perfect a section as far as possible before we strike it out. It was under that view of the case that I presented the amendment that I offered in the commencement of this discussion—from this section as reported by the committee, we should except such towns as may conclude to invest in this enterprise by first having obtained the consent of a majority of the tax payers who shall represent a majority of the assessed property in their towns. This makes the provision entirely safe. Unless they get a majority of the tax payers representing a majority of the taxable property they cannot bond the town for these purposes; and, sir, when they do that they have left it to the people interested to determine what they will do in the premises. So far as minorities are concerned, that question has been well and ably discussed by those who have preceded me, and I will not take up any time on that subject. It is said that there is danger that the towns may be obliged to pay these bonds, and that the road may prove a fruitless enterprise. Well, sir, let us look at the roads that have been built, and see what has been the consequence. I have looked over the assessment rolls of several counties of this State, and several towns in the respective counties where railroads have been built. I recollect that a gentleman of Rondout was inquiring into the effect that railroads had upon assessable property in the respective localities through which they passed. I instanced the Erie railroad, where assessable property had been enhanced to a very large degree; but I said that he need not

go further than towns on the line of the Hudson River road, where they had water navigation through a portion of the year. He made an investigation of the town of Rhinebeck, and it was ascertained that after the Hudson River road was built, the assessable value of those towns, particularly the town of Rhinebeck, had increased fifty per cent in one year, and the third year more than eighty per cent of the assessed value of the town, which any gentleman can ascertain by referring to the assessments of that town.

Mr. SCHOONMAKER—In reference to Rhinebeck, the gentleman will ascertain the fact that the increased valuation of that town was owing to the fact, that the assessors that year performed their duty, put in, not the assessed value, but the actual value of the property.

Mr. BELL—In answer to that I will say, that it was an assessment taken without any regard to previous investigations about the town of which we were talking at the time. Other causes may have influenced that matter. But you may take any other town, or any county on the line of these railroad thoroughfares, and you will find that the same principle obtains. It may not exactly in the same ratio, but the certain effect is to enhance the value of the country through which the railroad passed. I say, sir, from those investigations, and from my own experience, that should the towns along the line of the roads thus built lose their entire subscription, it would be more than made up by the enhanced value of real estate, and would be in the end a saving for those towns. So much for the argument in regard to the results of that investigation. But, sir, it is a principle that we should settle here, if we meddle with it at all, that the Legislature should be permitted to grant such privileges as may not retard the development of the State.

The hour of two o'clock having arrived, the PRESIDENT resumed the Chair in Convention, and the Convention took a recess until half-past seven o'clock.

EVENING SESSION.

The Convention re-assembled at half past seven o'clock. The President *pro tem.*, Mr. FOLGER, in the chair.

Mr. ANDREWS—I desire to ask leave of absence for Monday.

There being no objection, leave was granted.

Mr. GREELEY—I offer the following resolution relating to the business before the Convention.

Resolved, That the Committee of the Whole be instructed to report to the Convention the article now under consideration with the amendments thereto, at eight o'clock this evening.

Mr. BELL—I rise to a point of order. I believe I had the floor when the Convention took a recess, and we were in Committee of the Whole.

The PRESIDENT *pro tem.*—The Convention is not now in Committee of the Whole.

Mr. ALVORD—I rise to a point of order.

This Convention took a recess with the Chairman of the Committee of the Whole in his place, and the only duty of the President is to call the Chairman of the Committee of the Whole to his place, and resume proceedings in committee.

Mr. GREELEY—I beg leave to correct the gentleman [Mr. Alvord] as to a question of fact. The Committee of the Whole did not take a recess. Before the recess was taken the President had resumed his seat in the Convention.

Mr. ALVORD—Certainly; I understand that.

The PRESIDENT *pro tem.*—The Chair is of the opinion that the point of order is not well taken. We are in Convention, and the resolution of the gentleman from Westchester [Mr. Greeley] relating to the business of the day, is in order.

Mr. ALVORD—Then I move that the resolution do lie on the table.

The question was put on the motion of Mr. Alvord, and it was declared carried, on a division, by a vote of 33 to 21.

Mr. KINNEY—Mr. Root, of Oswego, requested me to ask leave of absence for him until Thursday morning next on account of sickness.

There being no objection, leave was granted.

Mr. FULLERTON—I ask leave of absence for myself for next week.

There being no objection, leave was granted.

Mr. RUMSEY—I ask leave of absence from the sitting of to-morrow.

There being no objection, leave was granted.

Mr. RATHBUN—I ask leave of absence for Monday evening.

There being no objection, leave was granted.

Mr. BELL—I ask leave of absence for myself from the sitting of to-morrow.

There being no objection, leave was granted.

The Convention again resolved itself into Committee of the Whole on the report of the Committee on Counties, Towns and Villages, Mr. BALLARD, of Cortland, in the chair.

The CHAIRMAN announced the pending question to be on the motion of Mr. Alvord, to amend the amendment of Mr. Bell to the first section.

Mr. BELL—At the close of this morning's session I was discussing the propriety of allowing towns, under certain restrictions, to aid in the construction of railroads. I had assumed that the action of this Convention would be to restrain the Legislature in granting State aid to all institutions of that character in the future. I also assumed that it might be for the benefit and convenience of the people in many portions of the State to procure the construction of railroads in their various localities. That from the fact that these roads, when built, might not connect any great centers of trade, but only afford an outlet for the people and products of the region of country where they are needed, they could not procure the aid of foreign capital;—that is, capital outside of the particular region of country affected. The history of railroads shows that railroads, even the most favored routes, have seldom, if ever, been built by local capital. The roads upon the leading routes of our country have been built mainly either by those who took the stocks as an investment for their money, or by governmental or State aid, or by towns or cities located at their

termini for the purpose of retaining or increasing their business. This class of roads have been in a great degree already provided for, in this State. All our great lines connecting important centers of trade have been completed. Mr. Chairman, notwithstanding the completion of these roads on the great thoroughfares in our State, there are many regions that require development and that need improvement. Many, as the gentleman from Schoharie [Mr. Krum] said, sequestered regions, abounding in resources and population, required to be improved and developed. Will it be wise, allow me to inquire—will it be just or right to deprive the people of those regions, by a constitutional provision, of the privilege of building their own roads by their own money or their own credit? They should certainly be permitted to enjoy and employ the only means left for that purpose, namely, the personal contributions, by subscription for the stock, or by assessing themselves or their towns, for the purpose of building these roads. Many of these sections are not so highly favored as those on the line of the Central railroad or other portions of the State, but will it be wise for us now to put in the Constitution a provision that cannot be changed for at least twenty years, that these regions shall never be developed, shall never be permitted to enjoy the facilities of railroad transportation, of railroad travel? Mr. Chairman, it seems to me to be a monstrous proposition, a proposition that will not bear the light of discussion. What right have the people residing along the line of the Central railroad, or in any other portion of the State, to say the people residing in the valley of the Black river, or in the valley of the Susquehanna, or in any destitute portion of the State, shall not be allowed to subscribe their own money and to pledge the faith of their towns, if need be, under certain safe and proper legislative restrictions, for the purpose of building their own roads? I trust this Convention will permit no such injustice to take place. True, laws have been passed allowing the towns to issue their bonds to aid in the construction of the Black River Valley railroad and the several other roads—some eight or ten in this State—and the work of procuring the assent of the tax payers of the towns and the organization of the companies is already in progress. The proposed inhibition cannot affect those companies only incidentally. But there are other sections of the State equally secluded that may, in time, wish to establish railroad intercourse with the rest of the world. For the benefit of the people thus situated, I think we ought to reject the amendment of the gentleman from Onondaga [Mr. Alvord]. His amendment deprives other persons of the right to do the very thing that we ourselves are now doing, namely, constructing, under a law of the Legislature which allows towns to issue bonds to aid in the construction of railroads. It would be a very selfish principle for us to say that because we have availed ourselves of this legislative provision we shall deny it to all other portions of the State. If we adopt the article at all, we should give every other section of the State the same right that we enjoy in this regard. The proposition of the gentleman from Onondaga [Mr. Alvord] does

not do equal and exact justice to all. It excludes all who may hereafter wish to avail themselves of such provision. But inasmuch as it is not in the purview of this Convention to repeal legislative enactments, it will be safe and wise to leave the future exercise of this power to the Legislature. From the care with which they have guarded the rights of the town, and the people, into whose hands these town bonds may fall, we have no good reason to distrust their future action on this subject. I would like to inquire if the committee who reported this section, and those who advocate its adoption, considered the effects of such provision upon the several companies formed under this law, and the effect that such a provision would have upon the towns that the Legislature have authorized to issue bonds? Would it not lead to interminable litigation? Would not misunderstandings rise up between the bondholders and the bond makers? Could we put into the Constitution that we are now endeavoring to frame, any more fruitful element of discord and strife and wrangling in the regions where those laws are to operate than to adopt this inhibition in the Constitution? Might we not apprehend a general misunderstanding along the lines of those roads? There is but one more aspect in which I will view this subject. The prohibition contained in the section, now under consideration, will, in my opinion, do more to defeat the adoption of this Constitution, or the provisions that we may agree to than any other element that we can adopt. The Legislature of 1866 authorized some nine or ten roads in different part of this State to be built on the issue of bonds of towns. In the western and northern portions of the State, the people are interested in constructing the roads in this way, for they have no other means of building the roads. There is not enough of local capital to be spared. They cannot expect the aid of foreign capital, and the people are of the opinion that this Convention will and ought to prohibit the future loaning of the State credit or the making of donations from the State for the purpose of building railroads. I would like to ask the gentlemen of the committee who reported this section, how they will provide for the development of the resources of those sections of the State? This section would seem to tie them up. There is no way by which they can make their own improvements, if we adopt this section in the Constitution. It may be well, sir, to amend this section as well as we can, to exercise all the wisdom of this Convention in incorporating judicious amendments; but, sir, while we have done all that we can in that regard, I think it will be equally wise to reject the entire section—to blot it out, and leave this matter entirely to the wisdom and the good sense and judgment of future legislation. Let the Legislatures act upon the applications as they come up, as they have acted in the past, and I do not fear any bad or injurious results. That is the only way, sir, that this matter can be rightly disposed of, and I hope that that will be the action of this committee this evening.

Mr. BICKFORD—One gentleman who has spoken on this subject characterized the section under consideration as "an outrage." I look

upon it in that light. I certainly feel outraged by it, and I am certain the people in the section of State where I reside will also feel it to be a gross outrage. What does the section propose? Nothing less, sir, than to prohibit any town, county or village from giving any of its property to, or loaning its credit in favor of any individual, association or corporation; from becoming a stockholder in a corporation, and from guaranteeing any obligation of an individual or corporation. All this it is proposed to prohibit, even if the sentiment of the people in these localities be unanimous in favor of another policy. Even if every man in town consents, the town must not give away its property or take stock in any corporation. No matter how great the benefit to be derived, nor how unanimous the consent given, the county, town or village must do none of the things prohibited. Strictly speaking, this prohibits even the support of the poor of the town or county. But I am free to concede that the main object of the section is to prohibit towns, counties and villages from bonding themselves to build railroads, and to forbid their taking stock. It may be all very clever and very kind in those who have now all the railroad facilities they need, to say, in effect, that the portions of the State now destitute shall have none. It may be very generous in these gentlemen to constitute themselves the guardians of the remote towns, and interpose the strong arm of the State to save them from ruin. I live in a locality where we are trying to get a railroad, and we are trying to get one by bonding the towns to be benefited. We realize that in all probability, if we do not get a road in this way, we shall not get one at all. Perhaps I and my constituents ought to feel grateful to gentlemen for their *protection*, so kindly offered. But it is a protection we have not asked. We reject it with scorn. We claim we are competent to look out for ourselves. The protection you offer! what is it? It is that which the wolf gives to the lamb. It is the protection which the hawk gives to the dove. You have now every advantage over us. Railroads run by your doors. You feel perfectly contented in this regard; and you want to let things remain as they are. And so, under pretense of protecting us, you propose to hamper us, to cast fetters about our limbs, and bind us down to our present inferior position forever! Do you call this generous? Do you call it just? I do not wish to arraign the motives of gentlemen, but it looks to me marvelously like pure and unmitigated selfishness. If we bond our towns and build a road, and if we have our bonds to pay, we do not expect to call on you for help. The gentleman from Seneca [Mr. Hadley], the gentleman from Cayuga [Mr. Rathbun], and the gentleman from Ulster [Mr. Hardenburgh], will neither of them be taxed to make up our losses. We will bear them ourselves. I wish to recall a little of the history of the State in relation to railroads. The State first loaned and then gave to the Erie railroad \$3,000,000. My constituents helped to pay it. See what the State has done for the New York Central. Originally prohibited from competing with the Erie canal for freight, the State has removed the prohibition. By this means the value of the canals owned in part by my con-

stituents, has been greatly depreciated and we have been heavily taxed in consequence. We have been taxed for the Albany and Susquehanna road, and for a railroad leading north from this capital, the Whitehall and Plattsburgh, or something of that kind. Last winter a bill was passed which would have given \$5,000 a mile for the railroad leading into our region. With this State aid, and by bonding the towns, together with such private subscriptions as we could obtain, we hoped to see the road speedily completed. But the Governor saw fit to veto the bill. We acquiesced, though we were not convinced by the Governor's logic. But we still hope to build the road by the aid of town subscriptions. And now there comes in this beautiful section to blast the last hope we have. It is cruel. It is wholly unjustifiable. We feel that a railroad in this era is a necessary adjunct of civilization. Will you hopelessly and forever shut us out from civilized life? What have we done that we should not be permitted to better and improve our condition? The State refuses to aid us after taxing us to aid others. Why will you be so cruel as to forbid us to help ourselves? Gentlemen have talked here about a supposed violation of principle involved in a town or village taking stock in a railroad company. They speak of it as taking a man's private property without his consent, for private use. Never before did I hear that the power of taxation exercised by governments was a taking of private property within the meaning of the publicists who have written and spoken on that subject. According to our Constitution private property cannot be taken for *public* use without just compensation. Is that provision violated as often as the Legislature imposes a tax? It is too absurd to ask. And yet gentlemen must answer that question affirmatively or give up the argument. The question in a nut-shell is this: Is it proper to allow a town to levy a tax to build a railroad under such restrictions as the Legislature may prescribe? That is the real question involved, for if a debt is allowed and created, that debt must be paid by taxation, if not otherwise provided for. The people are sufficiently averse to taxation; and if their desire to avoid taxation, together with the supervisory care of the Legislature, be not a sufficient safeguard, you can devise no other without taking away the power entirely. There is no question of the rights of minorities involved. No man has a right to shut himself up in a shell, and say, "Let me alone. Don't tax me. Let me live by myself, and live like a hog or an Indian." We live in society—in communities of villages, towns, counties, cities, States, and a general government over all. These communities are organized for the public good. All of them levy taxes for their own support, and for objects supposed to be for the public benefit. In a village, for instance, we levy a tax for a fire engine. Can one man or a dozen men stand aloof, and say: "We do not consider a fire engine a good investment for the village; we can get along without it; hands off, and don't tax us for what we don't want?" It is absurd. The majority must judge what the common good demands, and the minority must submit. There is no other way of getting along. Gentlemen have undertaken to

make a distinction between taxing for railroads and taxing for other purposes, saying that railroads are private property, not owned by the towns or county, but by a railroad corporation. But the section under consideration prohibits a town from taking stock in a corporation. If it does take stock, does it not own the stock? Certainly; it owns the stock as much as it owns its town-house. Where, then, is the distinction? Where is the taking of private property for private use?

Mr. HARDENBURGH—Will the gentleman allow me to ask him a question? Does the town control after it takes the stock?

Mr. BICKFORD—Just as much as any stockholder controls it. It is absurd to talk of any such thing as private property being taken for private use in this connection. It is only permitting the people to invest in property for the good and benefit of the town, and to be owned by the town just as much as any property of the town. It is a strange confusion of ideas that leads the gentlemen around me to talk in this absurd way. Sir, I shall vote for the amendment of the gentleman from Onondaga [Mr. Alvord] and hope it will prevail. I shall also vote for the amendment of my colleague [Mr. Bell] and hope that will prevail, too. I shall also vote for any other amendment which may be offered to weaken this odious section, to take away its deadly sting; and finally I shall vote to strike it out altogether as wholly pernicious. If I fail in that, I hope, at least, the counties of Jefferson and Lewis will be excepted from its operation. If gentlemen esteem this provision a blessing I entreat them not to thrust it upon my constituents, who do not wish to be blessed in any such way. Take it for yourselves if you are so determined. We are very willing you should keep the whole of this great blessing to yourselves; up our way we are so behind the times, not having felt the pernicious effects of railroad clatter, nor been at all corrupted by railroad manipulation, that we are in no mood to enjoy the great advantages you proffer us. When we have got a road ourselves we may possibly be as generously protecting as you are. We may then be as you are, like the old lady who having for twenty years borrowed her neighbor's brass kettle, finally got one herself, and on being applied to for a loan of it, coolly replied that she had come to the conclusion it was best to neither borrow nor lend. [Laughter.] When that time comes we may be able to appreciate your beneficent policy and gracefully accept the proffered blessings of your profound statesmanship. But till then our prayer will be, "From all such blessings and from all such protection, good Lord, deliver us!"

Mr. FULLERTON—If these amendments are to be adopted, it seems to me that some change in the phraseology of both is necessary. The original section "provides that no town, county, or village shall give any of its property or money, etc." The amendment of the gentleman from Jefferson [Mr. Bell] only includes towns, and I think it should name towns, counties and villages. And it seems to me that the amendment proposed by the gentleman from Onondaga [Mr. Alvord] is defective because it provides that

towns, counties and villages shall only act in this matter by giving their property or money under existing laws. He evidently means it shall only be done under laws that exist at the present time. In my view it is a fault in the phraseology of the amendment. To illustrate what I mean, suppose the Legislature at its next session shall pass laws authorizing the towns of Onondaga county to aid in building a railroad. If a town bonds itself under that law, it will be doing it under an "existing law." I submit that both amendments should be changed to carry out the designs of the framers.

Mr. KRUM—I would like to inquire what the effect of the adoption of the amendment of the gentleman from Onondaga [Mr. Alvord] will be, whether its effect will be to supersede the amendment of the gentleman from Jefferson [Mr. Bell].

The CHAIRMAN—It will.

Mr. STRONG—I would not trouble the committee at this late hour with any remarks, did I not disagree with some of the sentiments advanced by gentlemen opposed to this amendment. One of the gentlemen who addressed us, has stated we are not the guardians of the town. I conceive we are the guardians of the town; and I conceive, moreover, that we are bound to protect the town, and it is for the purpose of protecting the inhabitants of the town, that I shall make the few remarks I propose to make at this time. I readily admit that it has been decided by the court for the correction of errors, and I suppose the law of the State is well settled, that railroad companies are of sufficient public importance to invoke the right of eminent domain in their favor, and I admit that railroad companies have a right to take into their possession, and as their property (making sufficient compensation) a sufficient quantity of land for the tracks of their road and for their depots; but I can go no further than that. I do not believe that they have a right to impose taxes upon the people of the towns of the State. I suppose that it has been well settled, that although they may have a right to take the lands, yet they are bound to make just compensation for the land they have taken. And so it is, whenever this principle is invoked, we are bound to make a reasonable compensation to the owners of the property we take, whether we take it from the town in the way of taxation, or whether we take it directly on this principle of eminent domain. I conceive it has been well settled that the amount of compensation is not to be the amount of benefit which is to be derived by the community, or the benefit expected to be derived by the community; or even by the town. That is not the compensation which the law requires. The compensation which the law requires is in money or in money's worth; and when you take from the town a quantity of their property by way of taxation, the question is whether you make any compensation at all, and you do not. It is unsafe to trust to mere conjecture, as to what may eventually be a compensation when you take the property of the individuals or of inhabitants of a town, because very many of the projects fail, and then they would fail entirely in obtaining compensation. It has been so with some of the com-

panies which have been organized in England, and some in this State. We all remember Law's South Sea scheme, where very many people were ruined. There was then an entire failure, contrary to the general expectation. So it has been with regard to some of the institutions in this country. We have often lost by them. Some of them have not been able to pay their debts, and it is very doubtful if they ever will be, and there is a strong probability that when the railway companies have funds given them by taxation of the town, the town may never obtain the compensation at all, and therefore there will be a violation of the law. This privilege of taxation is a very important one, and it is one which is generally exercised by the Legislature of the State; it is a part of their legislative power, and it has been decided that they cannot refer to the people to lay the tax upon themselves; that it must be done by the Legislature, and if you cannot refer it to the people at large in the State, to tax themselves for any particular object, how can you refer to the people of the town? It is far more dangerous to refer a matter of this kind to the people of the town, than it would be to refer it to the people of the State. It is a very dangerous provision to allow the people of the town to impose taxes. Such a power generally operates very unequally, and taxes are often imposed against the will of the large property holders in the town or in the district. It is true, it has been decided that our Legislature may lay a tax—that it belongs to them to say whether the tax shall be a local one or a general one in the State. That is now settled by the court of appeals to be the law of the land. Therefore, that can be done. But where this principle of local taxation has been adopted, even in cases of considerable importance to the community, in the cases of our public education, there have been serious abuses of this right. Where school-districts have to impose taxes upon themselves, it very often happens that appropriations are made by the votes of those who pay very little toward the expense of school-districts. Generally, where there are large amounts, those amounts are assessed by the votes of people who pay little or nothing themselves. There have been instances of that kind in my own immediate neighborhood. In the school-district next to the one in which I live they have imposed a tax of five thousand dollars for building a school-house where probably one thousand would have been sufficient for all useful purposes; and when the tax was imposed it was found that the majority of those who imposed the tax were those who paid little or nothing themselves. And so in a district beyond, where they wanted to build a school-house, there was a regular meeting called, and they voted, I think, eventually, three thousand dollars, merely to put on an addition to the old school-house, and when we came to examine as to the property of those who gave the votes, it was found that only one-sixth part of the property of the district was represented by those who voted in the majority. It is a dangerous thing, even in so beneficial an object as our schools and the education of the children, to grant this power. In my own district, when a tax collector called upon me, I had the curiosity to examine the prop-

erty of the inhabitants of the district, and I found that there were more than one-half of the voters who did not pay one dollar each. This is the result of local taxation. I believe it will be found, if this privilege is guaranteed, that it will result in very many instances much to the disadvantage of the property-holders of the towns. I am aware there has not been much done by this Convention for the protection of property; but I conceive that we are as much bound to protect the property of a town as we are the lives and the liberty of citizens. If we intend to protect the property of the town, we are bound to see that a town cannot exercise this dangerous privilege. I am aware there have been appropriations made in the State for different railroads. There have been three millions granted to the Erie railroad, and seven hundred and fifty thousand dollars, I think, to the Susquehanna railroad, and it appears to me all are iniquitous objects. It appears to me that the people of the whole State ought never to have been taxed for the purpose of aiding in a local railroad—a railroad that does not extend through the State. I think injustice has been advocated in my own district. We have now a railroad running through the middle of Long Island, and through the town of Brookhaven, where I reside. That town extends from the sound to the ocean. This road, which we have already in existence, and which can barely obtain enough to pay the interest on its debt and expenses, accommodates the people in the middle and on the north side of the island. There is a railroad in process of construction on the south side called the South Side railroad, and there has been a proposition made that the town of Brookhaven—which extends about sixteen miles on the south side of the island—shall be taxed five thousand dollars a mile for the sixteen miles, making the sum of eighty thousand dollars for the benefit of this South Side railroad, which probably will never pay one dollar of its debts, to the prejudice of the people of the middle and north side of the island. It is possible, if the power was given to the town, that they might vote, and probably would vote, to make a donation, or loan, at any rate, to this South Side road, and for this loan the whole town would be taxed—not only those who would be benefited on the south side of the island, but those who would be injured by it by diminishing the traffic of the road from the middle of the island and on the north side. I can see, therefore, the project might operate even very injuriously to a portion of the people who might be compelled to pay a portion of the debt; and it seems to me any project of this kind which would authorize the taxing of the people of the whole town (some of our towns are very large, and some are accommodated with roads, in other parts of which it is proposed to lay a parallel road), that it would be an act of injustice to those who are not benefited. I claim, therefore, that the amendment of the gentleman from Onondaga [Mr. Alvord] is a very correct one, and one which ought to be adopted. I cannot believe it is the sense of this Convention to allow this local taxation, which would operate so injuriously on a portion of the people who are bound to pay them. It is true, that it is barely possible the money might event-

ually be refunded, but there is no certainty of it, and where it is necessary to resort to the towns, the strong probability is railroads could not be conducted so as to pay; for if they could be, there would be capitalists found who would very willingly embark their property in the adventure. If the road was constructed through private aid, there would be no necessity for calling for aid from the town. I think the necessary result would be the ultimate payment by the towns which give the bonds. As the gentleman from Cayuga [Mr. Rathbun] said, if the payment of interest was demanded on those bonds, and the railroad company was not able to pay interest, the town must be taxed for it; and if the railroad company was not able, when the bonds became due, to pay them, the towns would be taxed the entire amount of them. It does seem to me that it would be unjust to allow a feature of that kind to remain in our Constitution. I, therefore, am entirely in favor of the proposition of the gentleman from Onondaga [Mr. Alvord].

Mr. RUMSEY—I offer the following as a substitute for the whole section.

Mr. KRUM—I rise to a point of order. Two amendments are now pending.

Mr. RUMSEY—I understood a vote had been taken upon the amendment of the gentleman from Onondaga [Mr. Alvord].

The CHAIRMAN—There are two amendments now pending to the section.

Mr. FERRY—I rise not to discuss the merits of the question, but to suggest that the amendment of the gentleman from Onondaga [Mr. Alvord], and the amendment of the gentleman from Jefferson [Mr. Bell] are not antagonistic, as I view it. The amendment of the gentleman from Jefferson [Mr. Bell] prescribes upon what terms hereafter this power shall be exercised by towns, counties or villages. These terms may not be the terms, and in all probability are not the terms, of the existing law under which the projects have been started heretofore, and have been partly accomplished. That being so, both amendments are necessary, and are in entire harmony with each other.

Mr. BELL—I wish to ask the gentleman a question in regard to this very point. The amendment offered by myself is precisely in the language of the conditions on which towns are now authorized to issue their bonds, taken from seven or eight different acts that were passed in 1866. I will read:

"That the consent shall be first obtained in writing of such number of tax payers of such town or city, or their legal representatives appearing upon the last assessment roll respectively, as shall represent a majority of the taxable property of such town or city. Such consent shall be proved or acknowledged in the same manner as conveyances of real estate."

I adopted the precise language of the statute in this case, that hereafter they may issue bonds, but that the bonds shall only be issued on these conditions.

Mr. FERRY—The gentleman from Jefferson [Mr. Bell] did not probably understand me. I am aware, and we all know the conditions of the amendment which he offered, that they corre-

spond with those of the general statute upon the subject; but it does not follow by any means, nor do I suppose it true, that all the projects existing, and all the railroads now in contemplation of being built, were organized under this general law, but under special act of the Legislature, and in some respects they differ. Some of them have been pending for a good many years, and we know they were commenced under special act, in which the Legislature prescribed those certain conditions on which towns might subscribe, and they differ undoubtedly from the conditions of the amendment of the gentleman from Jefferson [Mr. Bell]. That being so, both amendments are necessary, and are in entire harmony; at all events, they are not repugnant to each other in any sense, and it would be entirely safe, if we pass the amendment of the gentleman from Onondaga [Mr. Alvord] to pass the amendment of the gentleman from Jefferson [Mr. Bell]. Were the amendment of the gentleman from Jefferson to pass and become a part of the original resolution, it would then be necessary to pass the amendment of the gentleman from Onondaga [Mr. Alvord], for the reason that existing railroads, projected, and in process of being built, have been organized under a different system from that prescribed by the amendment of the gentleman from Jefferson [Mr. Bell].

Mr. E. BROOKS—I understand the amendment of the gentleman from Onondaga [Mr. Alvord], has been modified and changed, so as to insert the word "now." I would like to have it read.

The SECRETARY read the amendment as follows:

"Insert after the word 'shall,' in line nine, 'except in pursuance of laws now existing.'"

Mr. E. BROOKS—The effect of the amendment is to shut down the gates, and to say practically, "Be it enacted from and after the assembling of the next Legislature, there shall be no power in any legislative body in this State, or as long as this Constitution endures, to allow the bonding of a town for the building of a railroad, or for any public improvement connected therewith." From and after the adoption of the Constitution, such will be the effect of this amendment if it becomes a part of the organic law of this State. We were engaged some hours yesterday in declaring that there should be no consolidation of any railroad in this State where the capital exceeds twenty millions of dollars. Following that, was an order of this Convention that there should be no power on the part of any railroad whose capital amounted to five or six millions of dollars, to connect with any long road, like the New York Central or the Erie railroads, and following this, was the refusal of the Convention to adopt the amendment of the gentleman from Cattaraugus [Mr. Van Campen], and now we seem to be, this evening, in a similar way, "fighting it out on the same line." And I am not surprised that my friend from Jefferson [Mr. Bickford], put up his hands, and exclaimed to his friends in this Convention, "from all such friends, good Lord deliver us!" Sir, I do not believe that it is a wise policy, becoming the great State of New York, to declare in its organic law that in all future time the towns of this State shall be

forbidden to appropriate what money they may see fit to appropriate for a great public improvement of this kind. I did not agree this morning with my friend from Ulster [Mr. Hardenburgh], in the view he took. He stated an extreme case, and stated the whole case against an appropriation of this kind when he asked where the equality was, or where the justice was—in exacting from those who held mortgages on personal property—any part of their property, as a contribution for a great public improvement of this kind. Sir, this is the whole case, and the strong case, and about all that can be said against it. And my answer is this, that although it might operate as a hardship, in regard to this precise case, and may do some injustice to the persons who hold personal property, to a widow, for example, whose all may be invested in personal property, by the exaction from her little sum of a pro rata amount for the contribution of this work; yet it is one of those extreme cases where the end in view, where the good done to the general community, warrants the application of the law even in their case. Sir, we did this in paying town debts and county debts. There are counties in this State, where a tax upon such property as this amounted to thirteen and fifteen, and even twenty per cent; but the effort was to wipe out then and forever all the debt which had been created for war purposes, and to leave the property free from future taxation on that account. But that is not the point. There are many cases which I might illustrate, which would act with some degree of hardship upon persons and upon property. Let me cite one. There are, unfortunately, it may be, a great body of persons who are childless, and yet their property is taxed to carry on and support the public schools of this State. There are thousands, I believe, who never can take any advantage of our public schools, and yet their property is taxed for this purpose; and it is to secure a common good, a general good, a great good, one which can be accomplished in no other way, that the tax is imposed. Sir, my friend [Mr. Hardenburgh], when I alluded to the taking of private property for public uses, very naturally responded that there was some compensation for that in the Constitution. But how is the compensation provided? You build a railroad through a county or a town, and every man knows this is not a subject to be sneered at or condemned. Every man knows that when you lay out a railroad through an agricultural county, you improve that land immensely beyond the tax which you impose upon the farmer who owns the land. That is the experience in the great body of counties wherever this experiment has been tried. My friend also alluded to what might be the custom in the Old World. Let me tell my friend that this Empire State, with four millions of inhabitants, is very far behind some of the most despotic governments in regard to its railroad improvements. Even the miserable government of Spain establishes a system of debenture, whereby the people of a town in Spain may call upon the government at Madrid either to secure the payment of taxes upon any expenditure for a public improvement of that kind, or by a sort of sinking fund make an appropriation for the depreciation

of the general expense itself. The same is true in Italy, the same is true in France; and I say in undertaking to put a provision like this into the Constitution of the State, we are not only behind the age in which we live, but we are behind the governments of the Old World, to which allusion, has been made. Sir, I do not believe, in undertaking to arrest a great work of improvement like this. I believe you enhance the value of every acre of property through which these railroads pass. I believe that thereby you contribute to the wealth of the State, that thereby you so enhance the property of the State as to enable the counties and towns, and the State itself, to contribute very considerably to the payment of the tax which may be for the benefit of all. Sir, there are some things which I hope the State of New York will not do, and this is one of them. I regard these improvements of so much public importance to the agriculture, and to the commerce, and to the general benefit of the State that I, for one, shall extremely regret to see any such provision incorporated into the fundamental law as the one now before us. I am willing to have much more stringent laws than we have, and I have, in that view, framed an amendment which I shall offer when it is in order to do so, that these grants shall not be made unless a majority of the voters consent, and unless, in addition, two-thirds of the taxable property in the town or county gives its assent thereto. Sir, let me illustrate a moment. What is the practical effect of a great work like this? Take the case of the county of Schoharie, and the Susquehanna road, to which allusion has been made. You build a railroad right through an agricultural country; you open its way to the sea-board and lakes; you open its way to the southern tier of counties. They have made the experiment in Europe, and it has been proved to a demonstration, that the effect of making a railroad through an agricultural country is precisely this: that there are three miles and a half of the land on each side of the railroad positively benefitted by the construction of such a work; that there are, therefore, people living within seven miles of this railroad who find an enhancement in the value of their property; who find themselves enabled to get their produce to a good market, and who have the benefit of this personal saving. Sir, I stated upon the floor yesterday, as a fact growing out of the demonstration which had been made in the government of France, that forty millions sterling was saved yearly in time alone by persons in consequence of the construction of railroads in that Empire. And every little railroad you build, and every large railroad you build, contributes to the great wealth of the people. Every farmer, every mechanic, every laborer feels the benefit of the construction of these works. Why, sir, it does seem to me the most short-sighted policy in the world for a State like ours, of four millions of people, which God has favored above every other commonwealth in the world, to make a sort of procrustean bed, and to say such works shall not be constructed. If a town in Schoharie county wants to build a railroad, and the question is fairly discussed, and the people with their eyes open deliberately say: "We will have this improvement, it is for our

benefit to have it," why shall I, representing the little town of Richmond, deny to my neighbor of Schoharie a benefit so great as that?

Mr. HARDENBURGH—Does anybody suggest any such proposition?

Mr. E. BROOKS—Yes, sir. I understand that to be the effect of this amendment.

Mr. HARDENBURGH—That is your judgment.

Mr. E. BROOKS—In my judgment we have been laboring to that purpose this day, and I have heard to very little advantage the argument made on one side or the other, if the effect of this provision is not, in regard to all future time, a positive prohibition for the accomplishment of great public works. Sir, I believe in improvement. I thought until I became a member of this Convention, that I was among the old fogies, and the most old fogey of them all; but I am amazed at finding the representatives of a great and powerful party of this State, undertaking to arrest any great work of improvement, the effect of which is to develop the resources of the State, to improve its personal property, to improve its real estate, and to accomplish the greatest possible good. Mr. Jefferson once said, and most truly, that he who made two blades of grass grow where one grew before, was a public benefactor, and he who contributes to one mile of canal or one mile of railroad, is also a public benefactor.

Mr. HARDENBURGH—I will occupy a moment or two of time in the further discussion of this question. It certainly seems to me that I have been misunderstood by my friend from Richmond [Mr. E. Brooks] in the position I took. I have never claimed, and I trust I never shall claim, that the people of any one of the localities of this State should not have the privilege that they have always enjoyed of making any public improvement through the district in which they happen to reside. The great principle upon which I stand here seems to be utterly ignored by that gentleman. It is, that I deny in this government that the right should be exercised, and I deny that it is exercised in any government in the known world, that the portion of the population being in the majority shall have the right to take from the minority a part of its earnings for private purposes. That has been argued here by the gentleman from Schenectady [Mr. Paige] and by the gentleman from Essex [Mr. Hale], and now again alluded to by the gentleman from Richmond [Mr. E. Brooks]. He constantly calls these great public improvements. I desire to ask my friend from Richmond [Mr. E. Brooks] a single question: whether he desires or intends to support that portion of the report of the Finance Committee which is now before this committee, in which it declares that the State shall not give nor grant nor lend to any association of individuals, or to any corporation, any portion of the public money?

Mr. E. BROOKS—I answer my friend, "Sufficient unto the day is the evil thereof."

Mr. HARDENBURGH—That is the answer I receive constantly in the discussion of this question. I am answered by the gentleman that it is a great public improvement. Who judges of it?

There are a hundred men who say it is right and ninety-nine say it is not. Now, in the town in which I happen to live myself, as the railroads are projected, one runs along the southern extremity of the town seventeen miles away—not three and a half, as illustrated by the gentleman, in France, where he thinks up to that distance they are really benefited by railroads; but twelve or fifteen miles away, where the people are in full communion with the rest of mankind, the farmer there is taxed precisely as much per acre as the farmer directly on the line of the route. Is that equitable? Because a large number of the people of the town do not happen to be congregated in the little village in which I live, is it right that they should be charged the same as those who live near the projected improvement, if improvement it ever becomes? You lose sight of the principle. It cannot be denied that there is a broad division here between public improvements (and I mean by that those improvements that the State desires to make, and if you propose to put that in the Constitution, you can then really found an argument upon it), and private enterprises. I claim that the majority have no right, either by the two-thirds vote that my friend suggests, or by a majority vote, or by a four-fifths vote, or any other vote short of the entire vote, to take away the property of any one citizen for any improvement, controlled by private parties, even if it is for the general good of the whole. The distinction is broad enough. When you build a school-house it does not belong to any private corporation. When you build a bridge it belongs to the whole body politic, to the commonwealth, and it cannot be mortgaged. There is nothing can be done with it. It belongs to the entire people. But here is a private corporation that asks the people to be taxed, a large portion of whom, or one of whom—I do not care which (because I desire to discuss this upon principle) says I do not believe in the feasibility or the propriety of this plan. Now I have earned a dollar; it lies in my hand; it is subject to be paid to the general government, or to the State for taxes, for roads and schools, and other matters necessary for the support of government; and this commonwealth, this community, by its laws, protects me in the possession of what is not consumed for such purposes. The remaining portion of that dollar that I have earned by my skill and my industry, after my share or contribution to the general fund is paid, belongs to me. The instant you go beyond that point, that moment you strike the heaviest blow you can possibly strike at the incentives to industry. Why do we want to earn money? In every community there are some of us who get together more of this world's goods than do others. What object have I to exert myself if a majority in the town in which I happen to live demand a portion of my money for purposes outside of the general taxes, and for objects which I do not approve. Is it not agrarianism? Many years ago my friend from Richmond [Mr. E. Brooks] opposed that doctrine.

Mr. E. BROOKS—It bears no more resemblance

to agrarianism than light bears to darkness. Agrarianism means that my property and your property shall be equally divided among the community. This amendment proposes no such thing.

Mr. HARDENBURGH—No, it is a little worse. It takes my property and divides it among you and everybody else, and leaves me to stand alone. [Laughter.] Now let us look in another light upon this great question, because it seems to have been confined by the gentlemen of this committee who have responded on the other side wholly to railroads. As much as I like railroads to be built, and I like them to be built by those who think they are going to be valuable, I do not want them to use *my* pocket-book for that purpose, if I think them unnecessary, unless under a general law where all must contribute to the work. There is some sense in the idea that a State can construct a great public work, it being a common good for the common whole. But here is a town in my county a majority of whose inhabitants are Catholics; they want to build a great cathedral; they do not want to pay for it themselves, but they desire the Protestant portion of the population to pay a portion of the expense. I would like to know if they cannot for that purpose, on the principle of the amendment, bond the town? I rather think a church is as much in the nature of a public improvement as a railroad.

Mr. E. BROOKS—Not sectarian.

Mr. HARDENBURGH—Sectarian? It is a Catholic church I am speaking of now. [Laughter.] But you can reverse it, and under the principle you advocate here, would you not compel the Catholic to contribute to the Protestant structure? The court of appeals, in my opinion, committed a grave error in the case of the Susquehanna railroad, and usurped powers properly belonging to the framers of the Constitution. They sought to make a Constitution, instead of interpreting one already made. With this decision staring us in the face, is it not better to remove all doubt on this question by putting in the body of the Constitution such an inhibition as is contained in the report of the committee. Let me call the attention of my friend [Mr. E. Brooks] to another view of this matter. For an illustration I will take the following: I have a mortgage upon a piece of property in my town, of five thousand dollars, that is all the property is worth. But the majority of the people of that town, in bonding the town, bond that property for fifty per cent (in the case of my own town it is only thirty-three and one-third per cent). By the terms and spirit of the laws enacted on this subject, I insist, sir, that that tax takes precedence over my mortgage. It is a tax, you say, but still only a tax for the benefit of a *private* corporation, although it may be for public uses and for the public benefit. You take this mortgage, this contract, signed and sealed between the mortgagee and myself ten years ago, and put a superior lien over it. And when you sell that property for the non-payment of taxes do you not only impair the obligation of that contract, but also give them the power to utterly destroy it? Can any man answer this point? The gentleman [Mr. E. Brooks]

says, in the strong illustration which he puts, and which he calls the sum of the argument on all sides of this question, that there are instances where personal property, as in this case, is to be taken, and which involves hardship; that these are exceptional instances; that citizens of a county like ours must suffer; that they cannot have it always equal. Then, to illustrate his position, he instances a widow who contributed her mite to pay bounty money for the purpose of filling up the ranks of our armies during the sad struggle through which we have just passed. How unfair is such an illustration? Was not that a contribution just precisely like the tax paid to the State government? Just like a tax paid to the common school fund, and, as it has been claimed by all those who have spoken here, who were patriotic, for a higher object? It was to protect the whole country. There is no analogy between the two cases. And in the discussion of this question it is not that I desire to deprive any town of any right to build a railroad; but I want to protect the minority in every town and hamlet in this State. Why, for what purpose do you have a Constitution? For what object was this Convention called together? To protect the majorities? Majorities are protected always, and want no written Constitution. You came here simply to frame the machinery of government, to divide it, as you do, into a Senate and Assembly—two houses, one a check upon the other; and then on top of that, you put a Governor, and then you make the third branch—the judiciary. Members stand here and deny the State the right to lend its credit, or give its money for any private corporation with all these checks upon it; and yet turn right around and say they will give it to these separate towns, counties and villages, and communities, with no check whatever, except the whim and passion of the audience that happens to be in reach of the ballot-box. Here is inconsistency. You come here to frame the machinery of government, and one thing above all others you ought to do, in strictness and in fairness, is to put in this Constitution a provision that you will not allow majorities in towns and counties to do what you refuse to allow them to do in the State at large. This is the purpose of a Constitution, as I understand—to protect minorities. The majority never wants nor cares for any provision to protect it. It protects itself. The Constitution is for the benefit of minorities. It seems to me a strange confusion of ideas (I speak, of course, with due deference to the judgment and opinions of others) to compare the United States government with our State government. Here, I claim, all power is vested in the people and inheres in them; they have it all, except what we take back in black and white, in this written instrument we are now about to make. But, with the Constitution of the United States it is directly the reverse. The general government has only just such power as the States give up to it. Keeping this in view, we return at once to the question, is it proper to take from minorities that power which we will not give to the State at large? It was not intended in the Constitution of 1846 to be given to the people of this State; therefore, the sum of

money that was given to the Susquehanna railroad, I think, was in direct violation of the intentions of the framers of that instrument. And so I might say this to my friend from Schoharie [Mr. Kinney]; he wants a railroad through there; and I don't know but I may allude, in the same connection, to my friend from Greene [Mr. More]. Some twenty odd years ago, according to the financial report, the State loaned them two hundred thousand dollars to build a railroad. We are paying the interest on it yet. There has not been a rod of iron on it for seventeen or twenty years, as I remember, and they are now bonding towns to reconstruct it. It may be a magnificent project, and if the farmers want to take hold and build this road, I think they ought to be permitted to exercise the right. But they have the sad experience of twenty years ago before them. Now, the position I take here is, that in the construction of these roads no man should be compelled to submit to the judgment of the majority in any instance, to determine whether they are or are not feasible projects. No man can satisfy his own mind that it is prudent to leave to localities a power that we refuse to the great body of the people themselves. Until I am satisfied of the justice of such a thing as that, I am in favor of inhibition in the Constitution itself.

Mr. BAKER—I understand from the debate as far as it has proceeded, that it is conceded by those in favor of the section reported by the committee that the courts have decided that the donation or rather the extending of the aid of towns to the construction of such public works is legal. Hence the opposition to continue in the Constitution the power vested either in the Legislature or in any other body, to further extend aid to such enterprises is based upon the ground of inexpediency. I am frank to say that if granting aid to railroads is in conflict with any provisions of the Constitution of the United States, I would be at once in favor of conforming to that Constitution. If to-day was the first time that this question was agitated in these halls, I would be in favor of shutting down the gates at once and prohibiting the withdrawing of one dollar for the construction of railroads or any other improvement which is held by individuals or corporations. But this is not the first time that this question has been agitated here. It is not the first time that this question has been discussed upon its legal points, or upon points of justice and equity. It being conceded that it is merely a question of expediency, I take the ground that if the power is to be continued in the Constitution if any body is to grant aid, it should be vested in and limited to these local boards which this section reported prohibits from exercising that power. I hope the Convention will come to the conclusion before we get through with our labors to put a clause in the Constitution prohibiting the Legislature in all future time, as long as the Constitution endures, from granting aid to institutions of that kind, or any other institutions of a local character, or of a private nature, whether charitable or religious. But I am not prepared, at this time, to say that the power should not be vested in some board or municipal authority. But if it is vested in any

authority it seems to me it should be vested in these local boards or authorities which have the opportunity of immediate observation to tell whether the improvement is needed, expedient or wise. Now, this section denies to these local authorities the right to exercise that power. Therefore I am opposed to this section as it stands. It is objected to the amendment proposed by the gentleman from Jefferson [Mr. Bell], and also to the amendment proposed by the gentleman from Onondaga [Mr. Alvord], that they allow these local authorities or Legislatures to take private property without compensation. The legality and constitutionality of that question has been settled it is conceded by all parties, and therefore it is not a question which we can raise, it is a question we are barred from raising. I will examine for one moment the other ground of objection, that these appropriations always operate unequally and unjustly upon the parties contributing for their support. Now I would like to inquire of any gentleman in this house what public work—not a mere private corporation—but what public work the people have contributed their money to construct, has operated equally, justly and equitably, so far as benefits are concerned, upon all the tax payers who contributed thereto? For instance, when the Erie canal was devised and constructed in this State, it is well known from statistics, that the valley of the St. Lawrence was quite as prosperous, and had as good prospects of rapid settlement as central New York. From Johnstown westward to Buffalo, was a dense wilderness, when De Witt Clinton devised the Erie canal, while there was a population emigrating from the New England States up the St. Lawrence valley. Lands at that day were higher in value in the St. Lawrence valley than in the Mohawk, and much higher than in the southern tier of counties in this State. But no sooner did De Witt Clinton recommend the construction of the Erie canal, and procure the passage of a law for its construction, than lands went up immediately in central New York. It had a tendency to draw population from the North and the South, and to nearly depopulate the northern regions of the State. That state of things continued for many years, until central New York, from Albany to Buffalo, was a densely populated and continuous series of cities and villages. Now, I would inquire of any gentleman whether the people in the southern tier of counties fared equally with those in central New York? It may be said that the debt contracted for the Erie canal was merely contingent; but it was a debt for which every dollar of taxable property in the State was liable; the people in the St. Lawrence valley and in the southern tier of counties were equally liable to pay taxes for the completion of that canal with the people of central New York. Yet it made the people of central New York wealthy beyond precedent in the history of the country. This will be seen by simple historical facts and statistics, that every gentleman can inform himself upon. Although the Erie canal was constructed for public benefit, did it not have precisely the pecuniary effect I have mentioned. How could it be said that it had an equal and just effect upon all parts of the State? Yet the people of all parts

of the State stood ready to put their hands in their pockets to pay their share of the expense necessary for the construction of that great public work.

Mr. HARDENBURGH—Did not the people of the State own that canal?

Mr. BAKER—I think I have stated that two or three times. If the gentleman observed what I said, the people of the State of New York owned the canal. But, I inquire, what benefit was that to the poor widow residing in one of the southern tier of counties, whose property was liable to be taxed for its construction, and who could never practically have any benefit from the navigation of that canal? We cannot all be canal captains; property must be taxed for its construction, and all cannot derive important benefits from that public work. I know that, theoretically, it is open for you and me and every other man to put his boat on the canal; but practically I have never been able to derive any immediate benefit otherwise than from living in central New York, where the general rise of property has benefited me with others; but this rise has been at the expense of the people of the southern tier of counties and of the St. Lawrence valley, as well as those living in central New York on the canal. Now, I know the legal technical difference between a work belonging to the State and a work belonging to a private corporation. I will come to that in a moment if the committee will indulge me. Prior to the construction of the Erie canal, it is known by gentlemen conversant with the history of property in central New York that you could buy all the lands from Montgomery county to Buffalo for about fifteen dollars per acre. It is known that as soon as the canal was completed, or that it became a certainty in the minds of the people that it would be completed, that you could not buy an acre of land on that route for less than from thirty to eighty dollars per acre. I may be too low in my figures. Now I will come to private corporations, and see the effect that a corporation has had upon that same property. Sir, after the Erie canal was completed, and after this series of continued lines of railroad were completed from Albany to Buffalo, land took another rise of more than seventy-five per cent. I may be mistaken about the precise figures; but it went up amazingly, at least in the Mohawk valley and in Central New York. But why? I will tell the gentleman why, by mentioning a little incident that occurred a few years ago in the county of Jefferson. There are gentlemen within these halls who will, perhaps, remember the incident. It was during the Irish famine. Grain went up to a very high price at our sea-ports instantly upon the arrival of news by steamer that there was a great famine in Ireland; and the grain and corn of the entire western part of the State of New York was rushed to market. In Jefferson county the farmers started their mills and got out their teams to get their corn to market at Rome, but before many of them could get to Rome with their grists of corn, the price of grain had gone down. Within three years after that, I think, it was found necessary and quite easy to construct the Rome and Watertown railroad. Now, that is

one reason property goes up where these private enterprises are established. They afford facilities for produce to get to market. Wherever a farm is located upon a railroad, it is nearer a market. In that way will any gentleman undertake to say that the people of the county of Jefferson were not benefited by the construction of that road? And could the question have been propounded to the great mass of farmers of that day along that road whether they would have allowed their towns to be bonded, there is no doubt but it would have been carried by an overwhelming majority. They had a practical realization in the construction of that road, of the facility of getting their produce to market and of the enhanced value of their lands. Now, sir, the State, in its legislation for a long series of years, has contributed to the construction of roads and loaned its credit to the construction of various railroad enterprises within its limits. It has been stated here by gentlemen that the State had made an absolute donation of three millions of dollars to the New York and Erie railroad, which I believe to be the fact. It is known to gentlemen within this Convention that the State loaned its credit to the Auburn and Syracuse road to the amount of two hundred thousand dollars; it loaned its credit to the Auburn and Rochester road to the amount of two hundred thousand dollars. There were four hundred thousand dollars loaned to these private corporations for the purpose of aiding and assisting them in constructing a railroad which was intended to develop the physical resources of the country. Will any gentleman from Cayuga county undertake to say that that county has not been directly benefited by the construction of these roads? Yet these roads were built upon the credit of the State to a limited extent. I will not undertake to say that these roads have not refunded this money that was loaned by the State; probably they have. But the State loaned its credit, and these roads used it. This amendment which is sought to be voted down, proposes that a town may loan its credit to a corporation upon just such terms as it deems proper, just as the State has loaned its credit to several railroads. Now the New York and Erie Railroad is completed, the Central railroad is completed, the Ogdensburgh and Rouse's Point railroad is completed—three great competing lines, constituting three great monopolies, monopolizing the entire carrying business from West to East. These three great competing lines have secured their connections with the great West; they have secured their connections with the East. They want no further aid nor no more competition. Now, if the State will allow me to put my hands into the treasury—if the State will give me a fortune—I will agree that it shall be prohibited from giving anybody else a fortune hereafter. That is the principle upon which many gentlemen seem to act. While some of these roads, part of which constitute the great New York Central, were running and operating upon the credit of the State, the little Susquehanna road was struggling to get even a foothold in the Legislature or anywhere else; it was asking the Legislature to allow the people to bond their towns and tax themselves for its construction. That was denied them.

I remember very well when that question came up here in the Legislature, a certain prominent gentleman who had acted as chairman of a city mass meeting in this city, and who had delivered a very eloquent address upon the prospective benefit to this city, in case the Susquehanna road was built, and had promised, I think, to subscribe one hundred thousand dollars on the credit of the city—

Mr. CORNING—Will the gentleman permit me to ask him a question? Has the New York Central ever received any aid from the State.

A DELEGATE—Never.

Mr. BAKER—If the gentleman understood me, I said that the State loaned its credit to the amount of two hundred thousand dollars to the Syracuse and Auburn road and two hundred thousand dollars to the Auburn and Rochester road; that they used that money for that purpose, but whether it had been refunded I was not advised. I take nothing back. I desire to ask the gentleman a question in return, if it is in order. Did these roads use the credit of the State for any length of time whatever?

Mr. CORNING—I understood they did.

Mr. BAKER—And that is all a great many of these roads ask, except that they want to use the credit of the towns and counties, not the credit of the State.

Mr. ALVORD—I would like to have the gentleman show me a law that does not require absolutely in this bonding of towns that they take the stock of the road and nothing else in payment?

Mr. BAKER—I am not now discussing any law that has been passed, I am discussing the propriety of general provisions in the Constitution merely permissive, I am not talking about the detail of any law; if I were, I perhaps would draw up some details that I think would meet the case properly, and decide whether and upon what terms counties and towns should loan their credit. I am speaking of the propriety of prohibiting in all future time what this State has repeatedly done in favor of the holders of the most powerful corporations and monopolies of this State.

Mr. RATHBUN—I rise to a question of order. The gentleman is discussing the question of loaning the credit of the State; when the question before the committee is confined explicitly to the bonding of towns. I submit the gentleman is too broad in his argument.

Mr. BAKER—I believe the word "bonded" is not in the provision. The word "loan" is used. When the New York Central got ready to go into business it was like a young man coming into his inheritance from a rich father. All it had to do was to put its cars on its tracks. Its business was furnished to its hand. This was not the case with the New York and Erie; it was not the case with the Ogdensburgh and Rouse's Point; it was not the case with any other road within this State. I say that after these three great competing corporations, or monopolies as we may call them, had secured themselves, the Susquehanna road was struggling for a foothold; it came here and asked permission to bond its towns that they might loan their credit for the purpose, and it was denied. I remember very well having in my possession a pamphlet containing the proceedings

of a meeting held in this city, where the mayor recommended the bonding of this city to make a contribution of one hundred thousand dollars, and in which address he held out to the people of this State that they would be benefited to the amount of three millions of dollars in the enhanced value of their property. Afterward and when that same gentleman was a member of the Legislature, he took strong grounds against State aid to the Susquehanna road, while mayor of the city of Albany, and presumptively representing the popular judgment of his constituency, he was in favor of granting the aid of his municipality to the road to the amount of \$100,000, but now while a member of Assembly, vehemently opposing even State aid to that road—but this was after the New York Central and Erie had secured all they wanted. Now, it may have no meaning at all, or it may have just this meaning, that these great monopolies have a certain interest to subserve, and when that interest has been secured, when they have obtained what they asked, when certain localities have secured lines increasing the value of their property, they are willing to shut down the gates and not allow one dollar to come out of the treasury nor out of the pockets of the people themselves even, though they are willing to be taxed for the building up of any other locality. Now, when it is said that these corporations are selfish, I concede it. We sometimes have to protect ourselves against the selfishness of corporations, by building and sustaining competing lines, that is, allow competing corporations to grow up in the same State, to allow other corporations to be built up on the public credit, and if we cannot get it at the hands of the State, get it at the hands of the people of the locality along the line, who are willing to be taxed. I say for one I will vote for prohibiting the Legislature from granting a dollar to any corporation, public or private, moneyed, charitable or religious. I believe it is one of the great sources of public corruption or—I will take that word back—bad public legislation. Mr. Chairman, the Chenango Valley road is now struggling for an existence; the people of that valley—as beautiful a valley as there is in the State of New York—ask permission to loan their credit for the purpose of constructing that road. Is it right and proper that people living north of the road should say you shall not have that right? Being conceded that it is right to grant the public credit for the purpose of aiding and assisting such corporations, I say it is pretty late in the day for gentlemen who represent the New York and Erie road, which has received three millions of the people's money without any return past or prospective, and for gentlemen who represent the New York Central, which has built a portion of its line on the people's money, to come here and say the people of the Susquehanna Valley and of the Chenango valley, or any other locality, shall not have the right to tax themselves—not the State—to develop their resources. Now, it is said, by gentleman, if you grant the right to towns that they will exercise the right improvidently. Now, I do not believe it. Neither do I believe that there is a gentleman within the hearing of my voice who

thinks that the people of a locality who are to be immediately by the law, will be any less competent than the Legislature have been. I believe that they will exercise a wise discretion in determining whether it will be expedient or inexpedient to aid any such enterprise. I am entirely willing to trust the people. In answer to the gentleman from Onondaga [Mr. Alvord] who seems to be discussing the details of a law, I am frank to say that I would prescribe such limits as to prevent abuses. I would leave the question to the majority of the tax payers in a locality to be affected, in such a manner that those who bear the burden would have the right to assume the necessary power in the matter. Now, it is said, we must protect the people, in their property, against this. One gentleman used language as though permitting a town to loan its credit and to raise a tax, or in any way to aid in the construction of a railroad, was to give some outside power or influence the power to take this property away. Why, the very proposition is to leave it. I want no better provision than to leave the capital of this State to its own protection. When we say we will deprive a man of the right to say how and where his money shall be invested in the development of the country where he lives, we take from him, in a certain sense, the right to say in what manner his property shall be invested. I have troubled the committee longer than I intended, I have spoken in a very desultory manner, but I have said pretty nearly all I wanted to say.

The question was put on the amendment of Mr. Alvord, and it was declared carried.

Mr. E. BROOKS—I now offer the amendment I alluded to when upon the floor, to come in the fourth line of the second section after the word "corporation."

Mr. BICKFORD—Will the gentleman give way a moment to allow a motion to strike out the whole section?

Mr. E. BROOKS—I will, if the gentleman desires it.

Mr. BICKFORD—Then I move to strike out the whole section.

The CHAIRMAN—It is not now in order. There is an amendment pending.

Mr. E. BROOKS—I then move my amendment.

The SECRETARY proceeded to read the amendment of Mr. E. Brooks, as follows:

Insert after the word "corporation," in the fourth line, the following:

"Except upon the consent of a majority of all the voters and two-thirds of the taxable persons representing two-thirds of the taxable property of such county, town or village appearing upon the last assessment roll."

The question was put on the amendment of Mr. E. Brooks, and, on a division, was declared lost by a vote of 38 to 45.

Mr. RUMSEY—I now propose this amendment as a substitute for the whole section.

The SECRETARY proceeded to read the amendment, as follows:

"The Legislature shall not hereafter pass any law authorizing any county, town, city or village or other municipal corporation to give or appropriate money or property, or to lend its credit in any way, in aid of or to any private person, com-

pany or corporation, or to take or be interested in any stock therein."

Mr. RUMSEY—I desire simply to say with regard to this amendment that it does not interfere with any law which now exists allowing towns to bond themselves for the benefit of any railroad; it applies entirely to subsequent action on the part of the Legislature. I think if this Convention intend to put any such restriction upon the Legislature, or upon the towns, that this is the way to do it. We know that towns now have no right to bond themselves for any purpose; that they have certain duties they are at liberty to perform, and amongst those privileges is not the privilege of bonding themselves or to lend their credit to the construction of railroads. It will, therefore, if you intend to make this restriction, be extremely awkward in appearance to say that towns shall not do what they have now no right to do. In addition to that, if we should adopt the section in the manner in which it is presented to us, it may carry by implication the right of the Legislature to authorize towns to execute bonds for the benefit of railroad corporations and thus defeat the object the committee have in view. Now, I am opposed to the whole system of bonding towns for such purposes, both upon the question of expediency, and the question of principle. The experience of this State with regard to much the larger number of these railroads has been that they have proved unprofitable, and almost all of them have passed out of the control of the original stockholders, and have gone into other hands for debts contracted in the progress of their construction. So that upon that point it is inexpedient for towns to be interested in the construction of a railroad. But if the Legislature may give to towns the right to contract debts for the construction of a railroad, there is scarcely any project that can be brought before the people but what the Legislature may grant the same right to inhabitants of a town to engage in. If the majority think it is best to construct a race-course, a church, or anything else, the Legislature may authorize the majority in the town to bond the minority for all these objects. Aside from this question of expediency, I am opposed to this practice upon principle, and have rarely heard advanced in a deliberative assembly a proposition more offensive to my ideas of propriety. It is every way vicious. It assumes to give to the majority of the inhabitants of the town the right to take and dispose of the private property of the minority, for other purposes than the necessary expenses of the government, without rendering any adequate compensation for the property thus taken away. It is true the laws provide that the towns shall have the stock of the railroad corporation for the bonds thus issued, but experience has shown that those are unavailable as a security, and under any circumstances, individuals ought not to be compelled to part with their property for the benefit of private corporations, except upon such terms as they elect. To compel them to do so in any other way is a more tyrannical exercise of the power of the majority, and there is no form of tyranny more offensive in its application than this. We are not to be told that the towns get com-

pensation, they get only railroad stock, and the individual will find this a poor thing with which to pay his tax for these bonds. The railroad itself will have passed into other hands by virtue of mortgages for other debts, and the bond debt alone will remain to the town to eat out the substance of the citizens in the shape of taxation. Now, take this Albany and Susquehanna railroad and look at its present condition as shown by its report to the State Engineer and Surveyor. I think you will find it has upon its shoulders, after all it has received from bonds of towns and the \$750,000 received by it from the State, a debt of over two millions of dollars, and the road is yet far from completion. I hope it may prove a success. It is in good hands, yet I fear that the original stockholders will in the end own but a very small share of the road. If they do they will be more fortunate than most stockholders of that class of railroads. But after the able review of this whole question, made by the gentleman from Ulster, I will not, at this late hour, longer detain the Convention, except to say I am astonished that amongst all the opponents of this section in the Convention who have spoken in regard to it, I have not heard a solitary individual who has dared to address himself to the principle involved in the section. They all address themselves to the question of developing the resources of the territory over which the railroad passes; but none speak of the impropriety of allowing the majority to appropriate the property of the minority for private corporations, without the consent of such minority.

Mr. HADLEY—In behalf of the committee who had the temerity to introduce this article, I wish to say that the proposition now introduced as a substitute by the gentleman from Steuben [Mr. Rumsey] meets with the concurrence of that committee. We hope it may pass.

Mr. ALVORD—I wish to say that I think the amendment offered by the gentleman from Steuben [Mr. Rumsey] should pass, as it is more appropriate in its language and application than could possibly be the section as amended. I hope, therefore, this substitute will prevail.

Mr. E. BROOKS—I would like to ask the mover of this amendment if he intends to apply it merely to railroad subscriptions in towns, counties and cities, or whether he intends it to extend to great charities in the State, and in this by-way make an attack upon all public charities that may belong to the State of New York?

Mr. RUMSEY—I intended by that proposition to prohibit towns, counties, cities and villages from disposing of the funds of those corporations for any purpose except the legitimate purposes of government, and that they should not step outside of that. It does not in its terms or its effect prevent the city of New York or any other place from appropriating all the funds which may be necessary for the support of their poor, and making every proper provision for the purposes of government.

Mr. E. BROOKS—If I understand it, the committee decided to prevent the Legislature

from contributing one dollar for any orphan asylum, hospital, or public charity whatever.

Mr. RUMSEY—I will say to the gentleman from Richmond [Mr. E. Brooks], that I think he is mistaken in that proposition. And that there may be no mistake, I will say that I understand the Committee upon the Powers and Duties of the Legislature have made provision for such charities as ought to be provided for; and if they have not, the committee over which the gentleman presides will no doubt make such provision for the cases they may think proper.

Mr. E. BROOKS—I am apprehensive that this amendment means a great deal more than appears upon its surface; and it is for that reason that I feel called upon, at this late hour, to call the attention of the committee to its meaning. Let me read it:

"The Legislature shall not hereafter pass any law authorizing any county, town, city or village, or other municipal corporation to give or appropriate money or property, or to lend its credit in any way, in aid of or to any private person, company or corporation, or to take or be interested in any stock therein, except as in this Constitution is otherwise provided."

If I understand the meaning of language, if this provision becomes a part of the Constitution of this State, it forbids the Legislature, for all time to come, from contributing one dollar for any of those great charities which have hitherto adorned and honored the State of New York. I hope, therefore, that the mover of this amendment will consent to confine it to those railroad corporations and appropriations of money in regard to which, we have had the discussion during to-day, and leave the charities to the Committee on the Powers and Duties of the Legislature, or to the Committee on Charities, of which I have been made chairman by the partiality of the President, and make this question to bear entirely on the merits of the railroads.

Mr. RUMSEY—Will the gentleman from Richmond [Mr. E. Brooks] allow me to say a few words.

Mr. BROOKS—Certainly.

Mr. RUMSEY—I will say to the gentleman that the railroad corporations have not been the only suckers upon the public treasury; there has been an almost interminable amount of calls upon the Legislature for bonding towns and counties and for every imaginable object; and when the amendment was framed by the committee, it was intended to cut off every proposition of that kind and to prevent the Legislature from authorizing their municipal corporations to do anything more or less, with regard to public money than such as was actually required to enable them to carry on the ordinary operations of government. I will say further to the gentleman from Richmond [Mr. E. Brooks], that in directing that the city of New York or any other place should appropriate its money with a view of carrying on the ordinary operations of the government of a city, or town or county, and in this is included its charities, they have a right now abundantly by the laws as they now exist to do everything that is necessary for the protection

of the poor of their cities, or of their towns, or of their counties.

Mr. E. BROOKS—We have a great many poor people in the city of New York to take care of besides these.

Mr. RATHBUN—The gentleman from Richmond [Mr. E. Brooks] has spoken once, and I desire to say a few words?

Mr. RUMSEY—If the gentleman will allow me, I am requested to put into that amendment these words "except as in this Constitution otherwise provided." I have no objection to put that in.

Mr. RATHBUN—I rose merely to answer the gentleman from Richmond [Mr. E. Brooks] in regard to the question which he put to the gentleman from Steuben [Mr. Rumsey]. This amendment offered by the gentleman from Steuben is a section which was drawn and agreed upon by the Committee on the Powers and Duties of the Legislature—unanimously agreed upon by them, for the express place and purpose for which it is now offered. The committee whose report is now under consideration reported a section to cover that ground.

Mr. BICKFORD—I rise to a question of order. It is not in order to discuss a report of a committee that has not yet been made. [Cries of question, question.]

Mr. RATHBUN—I am not discussing it. This was designed to operate precisely in the case where it is now offered—in regard to towns, cities and villages using their credit to build railroads, and for other purposes of that kind. The gentleman seems to think the Legislature are deprived of all power to appropriate money belonging to the State. If he will read it he will see that the whole of the section is drawn with a view to deprive the Legislature of the power to authorize cities, towns and villages, to bond themselves, and not in regard to the power of the Legislature to appropriate money. [Cries of question.]

The question was put on the amendment of Mr. Rumsey, and it was declared carried, on a division, by a vote of 50 to 31.

Mr. E. A. BROWN—I move that the committee now rise and report progress. [Cries of "no," "no."] I withdraw it.

Mr. BICKFORD—I move to strike out the section as amended, and I call for a count on that motion.

The CHAIRMAN—It is not in order. The section has been amended, and the question now recurs on the amendment as amended on motion of Mr. Rumsey.

The question was then put on the amendment as amended, and it was declared adopted.

Mr. BICKFORD—I now move to strike out the section as amended.

The question was put on the motion of Mr. Bickford and it was declared lost, on a division, by a vote of 31 to 53.

Mr. BICKFORD—I now move to amend by adding at the end "except railroad corporations."

The question was put on the amendment of Mr. Bickford, and it was declared lost.

Mr. FIELD—I move that the committee rise,

report this article to the Convention, and recommend its adoption.

The CHAIRMAN—The motion is not now in order. Are there any further amendments?

Mr. CLINTON—I will not make a motion, but I will venture a suggestion. It strikes me, that as we have a Committee on Cities, their Organization, etc., it is hardly proper for us to include the word "cities" in the section which we have just passed. It strikes me that that ought to be omitted.

Mr. BROOKS—I move to strike out the word "cities."

Mr. RATHBUN—I hope not. I live in a city, and I do not want it stricken out.

The question was put on the motion of Mr. E. Brooks, and it was declared lost.

The SECRETARY read the last section as follows:

"Counties, towns and villages shall severally possess and exercise such powers of local taxation as now is, or hereafter may be prescribed by law."

Mr. YOUNG—I move to strike out the section.

Mr. GREELEY—I move to strike out the word "is," in the second line, and insert "are," so that it will read "such however, as now are or may hereafter be prescribed by law."

The CHAIRMAN—It will be so amended if there is no objection.

The question was announced on the motion of Mr. Young.

Mr. YOUNG—I withdraw the motion.

Mr. BICKFORD—I will renew it. The section is wholly unnecessary. Unless the Legislature are prohibited from legislating, they may legislate as they have heretofore.

The motion was put on the amendment of Mr. Bickford, and was declared lost.

Mr. ALVORD—I move that the committee do now rise and report this article to this Convention.

The CHAIRMAN—We have not adopted the whole of the article.

The question was then put on the adoption of the last section, and it was declared adopted.

Mr. ALVORD—I move that the committee rise, report this article to the Convention and recommend its passage.

Mr. FULLERTON—Will the gentleman withdraw his motion for one moment?

Mr. ALVORD—I will.

Mr. FULLERTON—I wish to suggest an amendment to the first section; a moment's attention will show its importance. At the last session of the Legislature an act was passed authorizing a single election district in a town, or in a county, to bond itself to the amount of \$60,000 for the purpose of building a railroad. As I understand the phraseology of the first section, it will not prohibit the Legislature from passing a similar act; and I think the first section could be amended so as to prevent anything of that kind. I would therefore suggest that the words "or other other territorial division" be inserted after the words "municipal corporations."

Mr. BICKFORD—I want to say one word to the gentleman who introduced this amendment

[Mr. Fullerton]. Suppose the people in a certain district or county are unanimously in favor of uniting in some project of local improvement. They all want to do it, and want an act of the Legislature whereby they shall be permitted to enter into a combination for this purpose. How unreasonable it is to prevent them from doing it, forbidding the Legislature to grant that power. Suppose the district around the village or Carthage desires to bond itself; by this amendment it is prohibited from doing it.

Mr. RUMSEY—If they are unanimously in favor of paying their money for a railroad, can they not do it without bonding themselves?

Mr. BICKFORD—They may want to loan their credit for that purpose, and you forbid them doing it.

Mr. ALVORD—If they are unanimously in favor of it, could they not enter into bonds and give a mortgage upon their farms in addition?

Mr. BICKFORD—They may not want to mortgage their property. They want to make it a loan for the future. They may want to pledge their credit as a community, and why not let them do it?

The question was put on the amendment of Mr. Fullerton, and it was declared adopted.

Mr. ALVORD—I renew my motion that the committee rise, report the article to the Convention and recommend its passage.

Mr. HALE—I move to amend the proposition of the gentleman from Onondaga [Mr. Alvord] by providing that the committee do now rise and report this article for the consideration of the Convention.

The CHAIRMAN—The Chair thinks the amendment is not in order.

Mr. AXTELL—I move to amend, that the committee do now rise, report progress, and ask to be discharged from the further consideration of the article.

The CHAIRMAN—That follows, as a matter of course.

The question was put on the motion of Mr. Alvord, and it was declared carried.

Whereupon the committee rose, and the PRESIDENT *pro tem.* resumed the chair in Convention.

Mr. BALLARD, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on Counties, Towns and Villages, their Organization, etc., had made sundry amendments thereto, and had instructed their Chairman to report the same to the Convention, and recommend its passage.

The PRESIDENT *pro tem.* announced the question to be on agreeing with the report of the committee.

Mr. ALVORD—On that question I will call the previous question.

Mr. BICKFORD—I move that this Convention do now adjourn.

The question was put on the motion of Mr. Bickford, and it was declared lost.

The ayes and noes were called for, a sufficient number seconding the call they were ordered.

The SECRETARY proceeded to call the roll on the motion of Mr. Alvord to order the previous question, and it was declared carried by the following vote:

Ayes—Messrs. C. L. Allen, Alvord, Andrews, Ballard, Barto, Bowen, E. A. Brown, Cassidy, Champlain, Chesebro, Clinton, Conger, Corbett, Corning, Curtis, Daly, Evarts, Field, Folger, Fowler, Fuller, Gould, Graves, Greeley, Hadley, Hammond, Hardenburgh, Hiscock, Houston, Jarvis, Kernan, Ketcham, Lapham, Larremore, A. Lawrence, M. H. Lawrence, Lee, Livingston, Monell, Nelson, Paige, C. E. Parker, Pierrepont, Pond, Potter, Prosser, Rathbun, Reynolds, Rumsey, Smith, Strong, Tappen, Van Cott, Wakeman, Wales, Wickham, Williams—57.

Noes—Messrs. Axtell, Baker, Beadle, Bell, Bergen, Bickford, E. Brooks, Comstock, Cooke, T. W. Dwight, Eddy, Ferry, Fullerton, Hale, Hand, Harris, Hitchman, Houston, Hutchins, Kinney, Krum, Landon, Loew, Ludington, Merwin, More, Prindle, Silvester, Stratton, S. Townsend, Van Campen, Verplanck, Young—33.

The question then occurred on agreeing with the report of the committee.

Mr. E. BROOKS—I call for the ayes and noes on the first section.

A sufficient number seconding the call the ayes and noes were ordered.

The SECRETARY then proceeded to read the first section as reported by the Committee of the Whole as, follows:

SECTION 1. The Legislature shall not hereafter pass any law authorizing any county, town, city, village, municipal corporation or other territorial division to give or appropriate any money or property, or to lend its credit in any way in aid of or to any private person, company or corporation, or take or be interested in any stock therein, except as in this Constitution is otherwise provided.

The SECRETARY proceeded to call the roll on the adoption of the first section.

The name of Mr. T. W. Dwight was called.

Mr. T. W. DWIGHT—I ask to be excused from voting.

The PRESIDENT *pro tem.*—The gentleman will state his reasons.

Mr. T. W. DWIGHT—I voted in opposition to ordering the previous question, because I was not clear that charities were not included; but on hearing it read by the clerk I see that the subject of charities is not included, and therefore I vote aye.

The name of Mr. Silvester was called.

Mr. SILVESTER—I ask to be excused from voting. I voted "no" on the former question for the same reason as given by the gentleman from Oneida [Mr. W. Dwight]. I now vote "aye."

Mr. KRUM—Was the gentleman understood as asking to be excused from voting?

The PRESIDENT *pro tem.*—He was, and there being no objection, he was allowed to withdraw his excuse.

Mr. KRUM—I object.

The question was put on excusing Mr. Silvester, and it was declared lost.

Mr. SILVESTER—I vote aye.

The SECRETARY completed calling the roll, and the section was declared adopted, by the following vote:

Ayes—Messrs. C. L. Allen, Alvord, Andrews, Ballard, Barto, Beals, Bergen, Bowen, E. A. Brown, Cassidy, Champlain, Chesebro, Clinton,

Conger, Corbett, Corning, Curtis, Daly, T. W. Dwight, Evarts, Field, Folger, Fowler, Fuller, Fullerton, Gould, Graves, Hadley, Hammond, Hardenburgh, Hiscock, Hitchcock, Hitchman, Houston, Jarvis, Kernan, Lapham, Larremore, A. Lawrence, Lee, Livingston, Loew, Merwin, Mon. H. Nelson, Paige, C. E. Parker, Pierrepont, Pond, Potter, Prosser, Rathbun, Reynolds, Rumsey, Silvester, Smith, Strong, Tappen, Van Cott, Wakeman, Wales, Wickham, Williams—63.

Noes—Messrs. Axtell, Baker, Bell, Bickford, E. Brooks, Comstock, Cooke, Ely, Endress, Ferry, Greeley, Hale, Hand, Harris, Hutchins, Kinney, Krum, Landon, M. H. Lawrence, Ludington, More, Prindle, Stratton, S. Townsend, Van Campen, Verplanck, Young—27.

Mr. BICKFORD—I move to reconsider the vote just taken, and ask that it be laid on the table.

The PRESIDENT *pro tem.*—It will lie on the table under the rule.

The PRESIDENT *pro tem.* announced the pending question to be on the second section, which the SECRETARY proceeded to read, as follows:

SEC. 2. Counties, towns, and villages, shall severally possess and exercise such powers of local taxation as now are or hereafter may be prescribed by law.

The question was put on adopting the second section, and it was declared adopted.

The PRESIDENT *pro tem.*—The report of the committee having been agreed to by the Convention, it will be referred to the Committee on Revision, under the rule.

Mr. VERPLANCK—Does it go to the Committee on Revision while there is a motion to reconsider pending?

The PRESIDENT *pro tem.*—That has been the uniform practice so far.

Mr. VERPLANCK—Is it the proper practice?

The PRESIDENT *pro tem.*—The Chair is of the opinion that it is, inasmuch as the Convention has sanctioned it.

Mr. MORE—I move that the Convention do now adjourn.

The question was put on the motion of Mr. MORE, and it was declared carried.

So the Convention adjourned.

FRIDAY, August 23, 1867.

The Convention met at nine o'clock A. M., the President *pro tem.*, Mr. FOLGER, in the chair.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. GROSS presented two memorials, one from the German Independent Society for the Support of the Sick, and one from German residents of New York, against prohibitory legislation.

Which were referred to the Committee on Adulterated Liquors.

Mr. GREELEY presented the petition of John A. Brainard and others, citizens of Kings county, for prohibition of the traffic in intoxicating liquors.

Which took a like reference.

Mr. DUGANNE presented the petition of William Thomas and one hundred and nine others against sectarian donations.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. PRINDLE presented the petition of Frank W. Rogers and others, asking for separate submission of a clause prohibiting the sale of liquors as a beverage.

Which was referred to the Committee on Intoxicating and Adulterated Liquors.

Mr. STRATTON presented two petitions asking that the Legislature be prohibited from passing any law prohibiting the traffic in fermented wines and liquors, and that all laws regulating such traffic shall be general.

Which took a like reference.

Mr. WILLIAMS presented the petition of Abiel Macomber and others on the same subject.

Which took a like reference.

The PRESIDENT *pro tem.* presented the memorial of William H. Pendleton and others in reference to donations and charities.

Which was referred to the Committee of the Whole.

Mr. HALE gave notice, that on Tuesday next he would move to amend Rule 21 by adding thereto the following words:

"No article or amendment thus reported shall, except by unanimous consent, be considered or acted upon in Convention on the same day it shall be reported by the Committee of the Whole, nor until it shall be printed; but this prohibition shall not apply to the last day's session of the Convention."

Also that he would on the same day move to amend Rule 29 by adding thereto the following words:

"But the motion for the previous question upon the adoption of any section or article of the proposed Constitution, or any amendment thereto, shall be deemed to be lost unless two-thirds of those present and voting shall vote in favor thereof."

Mr. KINNEY—I ask leave of absence for Mr. C. E. Parker who has been called home on important business which he cannot neglect.

There being no objection, leave was granted.

Mr. FOWLER—I ask leave of absence for myself until Tuesday next.

There being no objection, leave was granted.

Mr. HALE—I ask leave of absence for myself for Monday evening.

There being no objection, leave was granted.

Mr. RATHBUN—I present the report of the Committee on the Powers and Duties of the Legislature. The report submitted here was drawn by the gentleman from Steuben [Mr. Rumsey], who is now absent. In regard to the mode in which the committee have performed their duties, I have the satisfaction to state that the committee are unanimous in their report on each and every part of it. Whatever credit there is due for labor and duty independent of the ordinary meetings and consultations, properly belongs to the gentleman from Steuben [Mr. Rumsey] and to the gentleman from New York [Mr. Burrill], who is also absent, and who took no part in the report.

The SECRETARY proceeded to read the report as follows:

The Committee on the Powers and Duties of the Legislature except as otherwise referred, respectfully

REPORT:

That in the discharge of their duties they have been somewhat embarrassed to determine definitely what particular subjects, under their organization, have been committed to their charge. A reference to the reports of other standing committees of this body, discloses the fact that such committees have labored under a similar embarrassment in regard to the duties which devolve upon them under the peculiar division of the several subjects made by the Convention. A necessary result of this uncertainty is that different committees have examined and in many instances reported upon the same subjects, thus furnishing to the Convention the benefits of the experience and judgments of more than one committee in regard to such subject.

Your committee have carefully and fully examined the several subjects which in their judgment were legitimately embraced in the range of their duties, and also such other matters as from time to time have been referred to them by the Convention, and after such examination have united in recommending the article accompanying this report, for adoption by the Convention.

It will be readily perceived that a considerable portion of this article consists of sections taken without change from the present Constitution of the State. Other sections from the present Constitution have been adopted by your committee, with such modifications as, in the judgment of the committee, are calculated to remedy defects and obviate evils which an experience of twenty years has disclosed in that instrument.

One essential object intended to be effected by a revision of the present Constitution, is to adopt such provisions of a general nature, as shall prevent the necessity of a resort to the Legislature in cases of private or local concernment, and thus diminish, so far as may be, the vast amount of legislation of that class with which the State has of late years been so largely deluged. In pursuit of this object your committee have prepared and recommended for adoption by the Convention, divers sections which they believe will, to a great extent, remedy existing evils, and refer a large portion of this class of legislation to a tribunal, where the questions may be fairly and equitably disposed of upon just and liberal principles, and with a just and proper regard to the interests both of the State and of those insisting upon claims against it. If the Convention shall succeed in providing an adequate provision whereby all claims against the State, not arising in the ordinary administration of the State government, shall be withdrawn from the action of the Legislature, your committee are satisfied that the labors of that body will be very materially lessened, and by removing this source of scandal, its reputation will be protected and its dignity promoted.

Your committee have also sought to remedy another evil existing in the Legislature of the State, by providing for the passage of general laws under which other large classes of objects may be safely provided for, which under the present order of things cumber the action of the Legislature, and furnish, to a large extent, material which has been used to fasten upon that body an evil repu-

tation. It is with these views and for this purpose, that your committee have provided for withdrawing from the direct action of the Legislature the class of private claims against the State, and requiring that they be submitted to another tribunal, having the power to examine the same fully, and the ability to decide them according to the very right of the case.

All of which is very respectfully submitted,
GEO. RATHBUN, *Chairman*.

ARTICLE.

SEC. —. The sessions of the Legislature shall be held biennially only, at the capitol of the State, or at such other place as shall be by law directed, commencing on the first Tuesday in January, 1866, and on the same day on every second year thereafter. The Governor may call special sessions of the Legislature by proclamation, in which shall be stated the particular object or objects for which they are so called, and no business shall be transacted at any such special session except such as shall be stated in the proclamation calling the same. The Legislature shall not adjourn for more than two weeks at any one time.

SEC. —. No member of the Legislature shall receive any civil appointment within this State from the Governor, the Governor and Senate, or from the Legislature during the time for which he shall have been elected, and all such appointments and all votes given for any such member, for any such office or appointment shall be void.

SEC. —. No person being a member of Congress, or holding any judicial or military office under the United States, shall hold a seat in the Legislature; and if any person shall, after his election as a member of the Legislature, be elected to Congress or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

SEC. —. A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings, and be the judge of the election returns and the qualifications of its own members; shall choose its own officers, and the Senate shall choose a temporary president who shall preside when the Lieutenant-Governor shall not attend as president, or shall act as Governor. No member shall be expelled by either house except by a vote of a majority of all the members elected to such house, and no member shall be twice expelled for the same offense.

SEC. —. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house without the consent of the other shall adjourn for more than two days.

SEC. —. For any speech or debate, in either house of the Legislature, the members shall not be questioned in any other place.

SEC. —. Any bill may originate in either house of the Legislature, and all bills passed by one house may be amended by the other.

ART. 3.—SEC. 14. The enacting clause for all bills shall be "The People of the State of New York, represented in Senate and Assembly, do

enact as follows," and no law shall be enacted or money or property be appropriated except by bill.

ART. 3.—SEC. 15. No bill shall be passed, unless by the assent of a majority of all the members elected to each branch of the Legislature: and the question upon the final passage shall be taken immediately upon its reading, and the yeas and nays entered in the Journal.

SEC. —. No law shall embrace more than one subject and the matters necessarily connected therewith, which subject shall be expressed in its title.

SEC. —. No bill shall be introduced into either house of the Legislature during the last five days of the session.

SEC. —. After a bill has been finally rejected by either branch of the Legislature no bill or joint resolution containing the same substance shall be passed into a law during the same session.

SEC. —. No law shall be revised, altered or amended by reference to its title only, but the act revised or the section or sections thereof altered or amended, shall re-enacted and published at length, and the act so revised, or the part or parts thereof so altered or amended shall be repealed.

SEC. —. The presiding officer of each house shall sign, publicly, in the presence of the house over which he presides, while the same is in session and capable of transacting business, all bills and joint resolutions passed by the Legislature, and the same shall not be so signed until they are fully enrolled.

SEC. —. On the day of its final adjournment the Legislature shall adjourn at twelve o'clock, at noon.

SEC. —. The Legislature shall not appropriate, lend or give any of the money or property of the State to or for any charitable institution, purpose or object, except such as have been or shall be established by and be owned and controlled solely by the State, except the following: the New York institution for the blind, the New York State institution for the blind, the society for the reformation of juvenile delinquents in New York, the New York institution for the deaf and dumb.

SEC. —. The Legislature shall not give, lend or appropriate any of the money of the State in any manner to or for the use of any person, body of persons, association or corporation, except such appropriations as are allowed by sections — of this article.

SEC. —. The credit of the State shall not in any manner, nor for any purpose be given or lent to any person, body of persons, association or corporation, nor shall the State take or be interested in any stock of any company or corporation, except in payment of or as security for a debt previously due the State.

SEC. —. The Legislature shall pass no law authorizing any county, town, city, village, or other municipal corporation, to give or appropriate any money or property, or to lend its credit in any way in aid of, or to any private person, company or corporation, or take or be interested in any stock therein.

SEC. —. The Legislature shall not audit or allow any private claim or account against the State, or

pass any special law in relation thereto, except to appropriate money to pay such claims as shall have been audited and allowed according to law.

SEC. —. The Legislature shall provide by law for creating a court of claims, to consist of three judges, to be appointed on the nomination of the Governor, by and with the advice and consent of the Senate, in which court shall be adjudicated all such claims against the State as the Legislature shall, from time to time, by general laws direct. Such claims shall be tried without a jury. In all cases where such claims shall amount to five hundred dollars or more, and be for the value of or damages to real estate, the judges of said court shall, and in all other cases may view the property in question, and in deciding thereon shall consider their own estimate of such value or damages in connection with the evidence in the case. In all other respects such court shall be governed in its adjudications by the legal rules which have heretofore existed between the State and its citizens, according to the course and practice of the common law as modified by the statutes of this State.

SEC. —. The statute of limitations shall prevail in favor of the State the same as in favor of individuals. The decisions of such court may be reviewed on the law on appeal to the court of appeals. The judges of said court shall hold their offices for the term of five years, unless sooner removed according to law.

SEC. —. There shall be a solicitor of claims, to be appointed in the same manner as the judges of the court of claims, whose duty it shall be to take charge of the interests of the State in all matters depending before the court of claims.

SEC. —. The Legislature shall not grant any extra compensation to any public officer, servant, agent or contractor after the service shall have been rendered, or the contract entered into, nor increase or diminish the compensation of any public officer, agent, contractor or servant during his time of service.

SEC. —. The Legislature shall not sell, lease, or otherwise dispose of any of the canals or salt springs of the State, but they shall remain the property of the State and under its management forever. The aggregate quantity of land now connected with the salt springs shall not be diminished.

SEC. —. The Legislature shall provide by law for making all the common schools within this State free, and requiring all children in the State to be educated.

SEC. —. The Legislature can confer upon the boards of supervisors of the several counties of the State such powers of local legislation and administration as it shall from time to time by general laws, applicable to all the counties in the State, prescribe, and while such powers remain in said boards of supervisors the Legislature shall not exercise any portion thereof. The Legislature may alter, modify or repeal such laws.

SEC. —. The Legislature may declare the cases in which any office shall be deemed vacant, when no provision is made for that purpose in this Constitution, and shall provide for filling vacancies in office; and in case of elective offices, no person appointed to fill a vacancy shall hold his office by

virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.

SEC. — Provision shall be made by law for the removal, for misconduct or malversation in office, of all officers (except judicial), whose powers and duties are not local or legislative, and who shall be elected at general elections, and also for supplying vacancies created by such removal.

SEC. — When the duration of the term of any office is not provided for by this Constitution, it may be declared by law, and if not so declared such office shall be held during the pleasure of the authority making the appointment.

SEC. — The Legislature shall not exempt any property from taxation except churches, burial-grounds, and that of free colleges and incorporated academies, and of all common or public schools organized pursuant to the laws of this State and subject to the supervision of the Superintendent of Public Instruction.

SEC. — The political year and legislative year shall commence on the 1st day of January.

SEC. — The Legislature may from time to time make general laws for the formation of corporations and alter or repeal the same, and all corporations hereafter to be created (except those for municipal purposes) shall be formed under such general laws. The Legislature shall not hereafter alter or amend the charter or extend the powers of any corporation (except municipal corporations) by any special law.

SEC. — The term corporation, as used in this Constitution, shall be construed to include all associations and joint stock associations or companies having any of the powers and privileges of corporations not possessed by individuals or partnerships. All corporations shall have the right to sue and be subject to be sued in all courts, in like cases, as natural persons.

SEC. — No railroad shall hereafter be constructed or operated within any of the cities or incorporated villages of this State, until the consent of the local authorities of such city or village shall be first obtained for that purpose, and also the consent of the owners of at least one-half in value of the property on the line of the streets through or over which the same shall be constructed, be previously had and obtained for that purpose; or in case the consent of such property owners be not obtained, then with the consent of the general term of the supreme court of the district in which such road shall be located, to be first obtained and such consent to be obtained and authenticated in such manner as the Legislature shall by general law for that purpose provide. The franchise allowing such railroad to be operated shall be sold at public auction to the highest bidder, after three months' public notice, describing the route of such railroad in the State paper, and in such newspapers in the city or village where the said railroad shall be located as the Legislature shall direct. The whole avails of such sale shall belong to the city or village in which said railroad shall be located.

SEC. — Every bill which shall have passed the Legislature shall, before it comes a law, be presented to the Governor. If he approve he shall

sign it, but if not he shall return it with his objections to that house in which it shall have originated, which shall enter the objections at large on its Journal and proceed to reconsider it. After such reconsideration two-thirds of the members elected to such house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise reconsidered, and if approved by two-thirds of all the members elected to such house, it shall become a law notwithstanding the objections of the Governor. But in all such cases the votes in both houses shall be determined by ayes and noes, and the names of the members voting for and against the bill shall be entered on the Journal of each house respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature by its adjournment prevents its return, in which case it shall not be a law. And no bill shall become a law unless approved and signed by the Governor during the continuance of the session of the Legislature, at which the same was passed, or the same be returned by him with his objections and the same be reconsidered and passed as aforesaid.

SEC. — The Legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payment by any person, association or corporation issuing bank notes of any description.

SEC. — No office shall be created for weighing, gauging, culing or inspecting any merchandise, manufactures, produce or commodity whatever but nothing in this section contained shall affect any office created for the purpose of protecting the public health or the interest of the State in its property, revenue, tolls or purchases, or of supplying the people with correct standards of weights and measures, or shall prevent the creation of any offices for such purposes hereafter.

SEC. — The Legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of county judge and of surrogate, in cases of their inability or of a vacancy, and to exercise such other powers in special cases as may be provided by law.

SEC. — The Legislature shall provide for the speedy publication of all statute laws and of such judicial decisions as it may deem expedient. And all laws and judicial decisions shall be free for publication by any person.

SEC. — No bill for any local or private purpose shall be introduced into the Legislature unless notice of the application therefor, stating the substance thereof, shall have been published in the State paper for twenty days before the commencement of the session of the Legislature at which such application shall be made. No such bill shall be introduced into the Legislature except during the first sixty days of the session.

SEC. — The Legislature shall not pass local or special laws in either of the following cases:

Granting divorces;

Authorizing the sale, mortgaging or leasing of the real property of minors or other persons under disability;

Changing the names of persons ;

For laying out, working or discontinuing public or private roads or highways ;

For locating or changing county seats ;

For legalizing, except as against the State, the unauthorized or invalid acts of any officer ;

For granting to any individual, association or corporation the right to lay down railroad tracks in the streets of any city or village ;

Giving effect to informal or invalid deeds or wills ; in any case for which provision has been made by any existing general law ;

And the Legislature shall pass general laws providing for the cases enumerated in this section, and for all other cases where a general law can be made applicable.

Mr. E. BROOKS—Before the report of the committee which has just been read is referred to the Committee of the Whole allow me to say that about all the standing committees of the Convention who have not reported, may as well at this time be prepared for a motion to be discharged from their respective labors. If I have heard the report aright, it covers about all the subjects that are left for the committees to report upon. As regards the Committee on Charities I feel bound to say this, that the Committee on the Powers and Duties of the Legislature have very charitably taken upon themselves entirely, the duties of that committee, and in regard to the Committee on Cities, of which I have the honor to be a member, I feel bound to say that they have taken substantially all the powers and duties which that committee have been intrusted with during the last two months or more. But I wish before I make a motion, to call attention to the facts, and to submit by way of inquiry to the gentleman who presented this report, whether it is intended by the report that has just been read to prohibit the State of New York for all time to come from granting any donation of money to any charitable institutions except those named in the report ; and then I would like to make the inquiry whether it is intended to impose a State tax upon all the orphan asylums and hospitals of the State ?

Mr. RATHBUN—I do not know how far it is in order—

The PRESIDENT *pro tem.*—Discussion is hardly in order upon the report, and under the rule it is referred to the Committee of the Whole and will be printed.

Mr. S. TOWNSEND—I move that double the usual number of copies of this report be printed.

Mr. BICKFORD—I move that the motion of the gentleman from Queens [Mr. S. Townsend], be referred to the standing Committee on Printing.

Mr. RATHBUN—I hope the gentleman will withdraw his motion, as to press it would postpone the time of printing.

Mr. S. TOWNSEND—I dislike to introduce anything which will delay the proceedings of the Convention, but I think with my colleague, that the questions here involved, are so important in their nature, that I would like to give my constituents an opportunity to read the report.

The PRESIDENT *pro tem.*—The motion of the gentleman from Queens [Mr. S. Townsend]

will not delay the printing of the usual number, but a motion requiring double the number to be printed must necessarily go to the Committee on Printing.

Mr. ANDREWS—I desire to ask leave of absence for Mr. Alvord for to-day.

There being no objection, leave was granted.

Mr. LAPHAM—I request leave of absence for Mr. Rumsey, of Steuben, who was called away last evening.

There being no objection, leave was granted.

Mr. CHAMPLAIN—I call up for consideration a resolution offered by me on the 17th of this month.

The SECRETARY proceeded to read the resolution as follows :

Resolved, That the Committee on the Preamble and the Bill of Rights, be instructed to report, as a part of the same, the eleventh section of article first of the existing Constitution, with the following amendment, as a part of said eleventh section :

"No part of the canals included within the limits and jurisdiction of the State, shall be ceded to any corporation created by the Federal government, nor to the Federal government except for mail, military and naval purposes exclusively, and in such cases only upon the express condition that the right is reserved to execute civil and criminal process issued under State authority on such ceded territory, and also the writ of *habeas corpus* in behalf of any person thereon imprisoned or restrained of liberty."

Mr. CHAMPLAIN—I desire to amend the resolution by adding after the word "except," the words "for the erection of forts, arsenals, dockyards and other needful buildings, and "

The PRESIDENT *pro tem.*—No action having been had on the resolution, it will be amended as requested.

Mr. BICKFORD—I move that the resolution be referred to the Committee on the Preamble and Bill of Rights.

The PRESIDENT *pro tem.*—The gentleman from Allegany [Mr. Champlain] has the floor.

Mr. CHAMPLAIN—I have been waiting for the report of the Committee on the Preamble and Bill of Rights, intending to move this as an amendment. Our sessions are so far advanced that I desire to submit a few remarks in support of this resolution now. The section of the Bill of Rights to which this amendment is applied declares the rights of eminent domain in the State to all the territory within its limits. The courts long since decided that the eminent domain, or the right to resume the possession of private property for public use upon paying a just compensation therefor, remained in the government or the people in their sovereign capacity. The object of this amendment is to limit the exercise of this right to the State itself in its sovereign capacity, or to corporations of its own creation, and to forbid its grant to corporations created by the general government absolutely, and also to the general government, except it be exclusively for purposes authorized by the Federal Constitution. The Constitution of the United States only authorizes the general government to take lands by grant from a State for certain national purposes, and

these only, and in such case only, by the express consent of the State. The Constitution of the United States, section 8, declares, "The Congress shall have power," and in subdivision 16 of the same section, "to exercise like authority (exclusive legislation) over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings." The commentators upon this subject say:

"The power, indeed, is wholly unexceptional, since it can only be exercised at the will of the State, and therefore it is placed beyond all reasonable scruples." (3 Story's Com., p. 101.)

Yet from the debate in the Convention it appears that thus qualified it did not escape without the scrutinizing jealousy of the opponents of the Constitution, and was denounced as dangerous to State sovereignty. (See Elliott's Debates.) At a recent session of the national Congress, a bill passed the lower house organizing a corporation to build a ship canal around Niagara Falls, thereby forming a competing line of communication to the Erie canal and certain railroads built by corporations created by State authority. This amendment will prohibit the Legislature from making any grants to a corporation so created. The subject of internal improvement by the general government received much consideration by the American people many years since, and upon a veto by President Jackson of such measures as not within the powers delegated by the people and the States to the Federal government he was triumphantly sustained. That consideration is of only incidental importance here, as it is clear the State can only be deprived of this right of eminent domain for purposes even of national defense by her own voluntary consent, and that the State of course may limit or qualify the grant or impose any condition she deems expedient for her future protection, or that of her citizens. Unless the Convention is ready and willing to leave this unrestricted and unbridged power in the Legislature, to transfer this right of eminent domain, this amendment should be adopted. If it is so surrendered it will be invested with power to take possession of any part of the territory of the State and extinguish the possessory right of the citizen and that for any purpose. In view of the alarming strides which the Federal government is now making toward centralization and consolidation, encroaching rapidly upon the reserved rights of the States, and beating down the barriers of the Constitution to accomplish such results, and in view of the fact that we have heard the Legislature of the State so frequently, and vehemently denounced upon this floor as an unsafe depository of power, is it not wise to guard the territory of your State from unrestrained disposition at their hands? The subsequent portion of the amendment proposes to protect the rights and liberty of the citizens by reserving authority to execute process upon the ceded territory issued by State courts, both civil and criminal, and especially the writ of *habeas corpus* in behalf of persons thereon imprisoned. By this amendment such ceded territory can neither be made a sanctuary for criminals

to flee to, nor a prison-house to immerse the citizen by Federal power, without the right to the great writ of liberty. Sir, this is a measure of vital importance to protect the home rights of the people. If you would attach the citizen to the State, if you would strengthen the bond of allegiance, you must satisfy the people your supervising care is over them, and that you remember and intend to protect their fireside rights and personal liberty. We have forts upon the jutting forelands of our coast, reared for the protection of the people; but they have been used to destroy. The guns upon the ramparts, that were pointed at an enemy from without, have been turned as a perpetual menace upon the citizen who was immured within. They have been denied that great bulwark of personal liberty, the writ of *habeas corpus*. In that country from which we acquired much that is valuable in our laws and institutions, that writ can be executed on every foot of British soil, will scale the gilded gates of the palace of the proudest king that ever sat upon the throne, to deliver the humblest subject. The dark frown of the strongest garrisoned fortress or castle cannot repel it. There the advocate boldly threw himself between the scaffold and its victim, and the judge, unawed by government threats, bravely declared the supremacy of the civil to military law on all occasions. Let me cite to you a precedent in pleasing contrast with cases within the recollection of all in our own country. In November, 1798, and some months after the suppression of the Irish rebellion of that year, Theobald Wolfe Tone, who was on board the French line-of-battle ship, one of the vessels captured by Sir J. B. Warren's squadron off the Irish coast, fell into the hands of the English government and was brought to trial by court-martial in Dublin. Mr. Tone appeared in court in the dress of a French officer. When called upon for his defense he exclaimed, "Guilty, for I have never in my life stooped to a prevarication." But he pleaded (of course very ineffectually) his commission from the French directory. He had been connected with the rebellion but had withdrawn from the country before it broke out and joined the French expedition to aid it. He proceeded to read a paper prepared as a justification of his conduct in which he said: "In the glorious race of patriotism, I have pursued the path chalked out by Washington in America and Kosciusko in Poland. Like the latter I have failed to emancipate my country and unlike them both I have forfeited my life." Mr. Tone was condemned to death and his execution fixed for the 12th of November. On that day Mr. Curran appeared in the Court of King's Bench and moved for a *habeas corpus* upon an affidavit of Tone's father, that his son had been brought before a board of officers calling itself a court-martial, and sentenced to death. The report proceeds, "I do not pretend to say," observed Mr. Curran, "that Mr. Tone is not guilty of the charges of which he was accused. But it is stated in the affidavit as a solemn fact that Mr. Tone had no commission under his Majesty, and therefore no court-martial could have cognizance of any crime imputed to him while the Court of King's Bench sat in the capacity of the great criminal court of the land. In times when war

was raging, when man was opposed to man, in the field court-martials might be endured. *But every law authority is with me while I stand upon this sacred and immutable principle of the Constitution, that martial law and civil law are incompatible, and that the former must cease with the existence of the latter.* This is not the time for arguing this momentous question. My client must appear in this court. He is cast for death this day. He may be ordered for execution while I address you. I call on the court to support the law. I move for a *habeas corpus* to be directed to the provost marshal of the barracks of Dublin and Mayor Sandys, to bring up the body of Mr. Tone."

Chief Justice—"Have a writ instantly prepared!"

Mr. Curran—"My client may die while this writ is preparing."

Chief Justice—"Mr. Sheriff, proceed to the barracks and acquaint the provost marshal that a writ is preparing to suspend Mr. Tone's execution, and see that he be not executed."

The court awaited, in a state of the utmost agitation, the return of the sheriff.

Mr. Sheriff—"My lords, I have been at the barracks, in pursuance of your order. The provost marshal says he must obey Mayor Sandys. Mayor Sandys says he must obey Lord Cornwallis."

Chief Justice—"Mr. Sheriff, take the body of Tone into your custody; take the provost marshal and Mayor Sandys into custody; and show the order of this court to General Craig."

This was the manner in which the majesty of the British civil law interposed in behalf of the life and liberty of the citizens. British judges were not cowed and did not tremble, awed by kingly power or the terrors of government, but awaited deeply agitated, fearing for the supremacy of civil law and trembling for the life and liberty of the citizen. In our own State Fort Lafayette, a name associated with all the glorious and tender memories of the past, has been the domicile of sorrow, within whose walls the citizen was imprisoned without accusation and without trial. If the writ was obtained from a cowed and intimidated court such writ has been dashed back from their walls powerless to deliver or even to know the cause of imprisonment. When the territory upon which the fort is reared was ceded, if this right had been retained the execution of these writs could have been enforced by State authority. Homes were invaded, citizens were arrested by hundreds without warrant and without accusation. Often upon the malignant procurement of a private enemy or the more dangerous and despicable agency of a secret informer. Women were arrested, incarcerated and subjected to insult and brutally outraged. Judges were torn, bruised and bleeding from the bench, and ministers of the gospel from the very altars where they were ministering in the holy offices of religion. Editors were seized, handcuffed and dragged through the streets to prison, their papers silenced, or presses destroyed. Lawyers were summarily arrested for daring to apply for the great writ of liberty and consigned to the same cell with the client they sought to aid. In my own section of the State a minister of the Gospel was arrested for preaching a sermon from

a text from Christ's sermon on the Mount. Application was made to the supreme court of that judicial district at general term for a writ of *habeas corpus* in his behalf, and it was refused by a majority of the court. It should be mentioned, though, on all occasions, and I take pride in stating it here, that one judge on that bench, educated in these great principles of personal liberty, Hon. Martin Grover, boldly upheld them and dissented from the opinion of the majority of the court. Let it be remembered that the object of this writ is simply to inquire into the cause of imprisonment, and if found valid and legal, it is made the duty of the court to remand the prisoner. And let it be remembered, too, that the supreme law of the land, the Constitution of the United States declares that "No person shall be deprived of life, liberty, or property, without due process of law." Another citizen was following the funeral of a beloved daughter, and even while he was bending over the grave he was torn ruthlessly away and incarcerated in a dungeon, without knowing the cause. Still another, highly gifted with intellect, but of a proud and sensitive nature, was confined in the humid atmosphere of a prison, conscious that he was guiltless, where he brooded over the wrong until reason became dethroned; and in his wild ravings he talked of America as the land of liberty that he might never visit more. He could see through the loop-holes of his darkened cell his country's banner waving o'er the deep; and as some lingering ray of reason flashed through the dark expanse of mind he associated that banner with his deliverance. In his wild delirium he shouted to it, that the chain of the tyrant was over him now, and he implored it to come and bear him back to his native land. But it would not or could not bring him aid, and his sufferings were finally terminated by his own hand. He died a suicide. Some died from long suffering, and when the order for deliverance declaring their innocence, obtained by unceasing exertion of friends, came to the prison, it found them cold and inanimate in death. The record of acquittal was an idle mockery to the living, but, oh! how unavailing to the injured dead. They heard not the proclamation of their innocence, for "deep, deep is the sleep of the dead, and low is the pillow of dust." But why continue the recital of individual cases. They can be counted by hundreds and thousands. Those that survived of these victims of political hate and persecution pined in the dungeon's gloom month after month and year after year—business ruined, health destroyed—the haggard victims of silent woe. Said the great British orator, in describing the fire-side rights of the English peasant in his allusion to the maxim of English law, that "Every man's house is his castle":

"The poorest man may in his cottage bid defiance to all the power of the crown. It may be frail—its roof may shake, the wind may blow through it, the storm may enter, the rain may enter—but the King of England cannot enter; all his power dared not cross the threshold of the ruined tenement."

Sir, if you would strengthen this Constitution with the people and inspire enthusiasm for it, upon the hill-sides and in the valleys where are

situated the humble homes of the people, re-enact in it these great rights of personal liberty which have always been so dearly cherished by American freemen. Is the liberty of your citizens also to be laid as a sacrifice upon the altar of arbitrary Federal power? These complacent and cowardly surrenders of sovereignty by the State will not strengthen the general government. They will weaken it, they will turn to ashes in its hands. The States are the pedestal upon which the superstructure of the Federal government is reared, make the States strong and you make the Federal government strong, weaken the powers of the States, give up their reserved rights, and you impair the very foundation of the central government, and it will topple down in ruin. Said a great and wise statesman (General Jackson) in one of his messages to Congress resisting the aggression of the central government upon the States:

"Nor is our government to be maintained or our Union preserved by invasion of the rights and powers of the several States. In thus attempting to make our general government strong we make it weak. Its true strength consists in leaving individuals and States as much as possible to themselves; in making itself felt not in its power but in its beneficence, not in its control but in its protection, not in binding the States more closely to the center, but leaving each to move in its proper orbit."

Let me point you to the reconstructed States of the South—to Tennessee which has proved in the early days of the Republic a firm rock of support to the Union, consecrated in the memory of Americans to-day as containing the burial place of Jackson and Polk. Does the policy of the government in Tennessee, or indeed in the entire South, strengthen or weaken the bond of national union? The press silenced, the people enslaved, the access to the ballot-box closed, that right so "inestimable to freemen and formidable to tyrants only," denied them, the government forced at the point of the bayonet in the hands of a semi-barbarous population. The fires of religion have gone out upon her cold and blood-stained altars; an unlicensed soldiery perambulate the State to uphold such government at the point of the bayonet, pretending to protect, but really to insult and outrage the defenseless. Who can predict the results or depict the horrors which spring from such a policy? Spoliations, confiscations, murder and rapine—the cheek of the citizen pallid with fear, his heart frozen with despair, and the demon of anarchy infuriated with political hate, passion and crime, sweeping over that desolated land with a vulture scream for blood. The voice of authority is a sound of terror.

"Thus freedom now so seldom wakes,
The only throb she gives
Is when some heart indignant breaks
To show that still she lives."

This policy is inaugurated by the national Congress in violation of the plighted faith of the resolution of July, 1861, in which the same body solemnly proclaimed:

"That the war is not waged on our part in any spirit of oppression, or for any purpose of conquest, or of interfering with the rights or estab-

lished institutions of these States, but to defend and maintain the supremacy of the Constitution, and to preserve the Union with all the dignity and rights of the several States unimpaired."

It is done in violation of the plighted faith of a soldier given on the field when Lee and Johnson surrendered, and in violation of the faith springing from a compliance with conditions exacted by the Executive upon the formation of the provisional State governments. The people of the North, the farmer, the mechanic and the laboring man, must pay the enormous expense attending this fearful military experiment to build up a negro party and negro government in the South upon the ruins of "the dignity and rights of the several States" which was solemnly promised should remain *unimpaired*. Sir, there was a time of national jubilee; the shroud of battle was cast aside and our land was being illuminated with the golden beams of peace; a grateful people sprung to prepare the soldiers' festival; a sudden pall of gloom o'erspreads the land; a nation's blood is congealed with horror; the chosen President of your Republic is assassinated in the Capital; before a stricken people yawns the dark abyss of anarchy. His chief secretary, an aged man, lies in another chamber; the angel of death hovers o'er him; there is an assassin lurks in that chamber, with dagger poised o'er the prostrate form. Whence come the assassin? Who invited him? It was the tinkle of that little bell that had sent the minions of the government to invade the liberties of the people. It was that signal that, in the dead of night had torn the citizen from his castle and hurried him to a returnless distance from his family and his home. It was the tinkle of that little bell which had now become a loud tocsin of alarm, arousing to vengeance, bloodshed and assassination! Sir, I have said that the fort situated within our borders which was made the prison of our citizens, is associated with the glorious memories of the past. It was named in honor of that illustrious man, the Marquis De Lafayette, who voluntarily left his own country to aid in our revolutionary struggle. Fifty years after that struggle closed he was called to lead a revolution for American principles of liberty in his own country. That slumbering volcano of revolution burning in the hearts of the people upon which for a long time royalty and the privileged classes in France had been reposing, broke out in violent eruption. The National Assembly, by unanimous vote, elected Lafayette commander-in-chief of the National Guard of all France. The Bastille, the great and gloomy prison-house of Paris, became the center to which the tumultuous waves of revolution converged. Lafayette ordered its demolition; and it was leveled from turret to foundation-stone, and the wretched captives immured within its walls for long years set at liberty. Some of these had lost their reason. The key of the Bastille was placed in the hands of Lafayette, and he sent it to Thomas Paine, an American in London, to be forwarded as a present to Washington, together with a drawing in pencil representing the destruction of the prison. In the letter to Washington accompanying the gift he says:

"Give me leave, my dear general, to present you with a picture of the Bastille just as it looked a few days after I ordered its destruction, with the main key of the fortress of despotism. It is a tribute which I owe as a son to my adopted father, as an aid-de-camp to my general, as a missionary of liberty to its patriarch."

Mr. Paine forwarded from London the key and drawing, accompanied by a letter in which he said:

"I feel myself happy in being the person through whom the Marquis has conveyed this early trophy of the spoils of despotism and the first ripe fruits of American principles transplanted into Europe to his great master and patron. * * That the principles of America opened the Bastille is not to be doubted, and, therefore, the key comes to the right place."

Washington wrote to Lafayette:

"I have received your affectionate letter by one conveyance, and the token gained by liberty over despotism by another, for both which testimonials of your friendship and regard I pray you to accept my sincerest thanks. In this great subject of triumph for the New World, and for humanity in general, it will never be forgotten how conspicuous a part you bore, and how much luster you reflected on a country in which you made the first displays of your character."

The key was hung in Mount Vernon as a memento of the triumph of American principles of liberty in France, and an emblem of their all-pervading vigor in our own country. Sir, what a melancholy retrospect for the American citizen! The Bastille is crumbled in France. But the principles of despotism that reared it are transplanted to America, and impress the character of the very fortress named after its illustrious destroyer. The Bastille is here. If the spirits of the mighty dead ever mingle with the destinies of the living, how must the groans of anguish wafted up to Heaven from that prison fall on the mighty spirits of the immortal Washington and Lafayette? That key still hangs in the hallowed shades of Mount Vernon, an emblem of liberty. Speaking for the people of the Empire State in a voice that shall go up to Heaven louder than leaping of thunder, let us boldly proclaim those great principles of American liberty that reared upon our consecrated shores Fort Lafayette for its defense, and that crumbled in ruin the Bastille of France!

Mr. AXTELL—There has been a great deal of mourning and lamentation in various parts of this land over what has been called the "lost cause." Perhaps that mourning and lamentation have been premature. Those persons who have mourned and lamented have not listened to the eloquence of the learned gentleman who has just taken his seat [Mr. Champlain], otherwise they would hardly have lamented over that cause as the "lost cause." The trumpet tones of the eloquent gentleman are to bring to life that cause that was dead, that cause that went down under the sturdy blows of men who were inspired by the spirit of freedom, not "minions of the government," but men, who, under the holiest inspiration that ever nerved

man to go to the battle-field, trampled down that tyrannical cause, trampled down that spirit of hate, and hell and despotism that sought to strangle liberty on this continent. I apprehend however, sir, that the "cause is lost," that it is dead and buried, and even the eloquence of the gentleman from Allegany [Mr. Champlain] will never be able to call it forth from its grave. I move that this resolution do lie on the table.

The question was put on the motion of Mr. Axtell, and it was declared carried.

Mr. S. TOWNSEND—I offer a resolution.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That the Committee on the Revision of the Amendments to the Constitution be instructed to so provide in the article adopted by the Convention yesterday, August 22d, that nothing contained therein shall preclude the people of the several incorporated villages, cities, towns and counties of this State from loaning the credits of their several districts to such local works of public utility as shall have obtained the sanction of a majority of the electors of the district at a special election held after one month's public notice for that purpose; provided that said loan be also sanctioned by two-thirds of those elected to their several boards of village, city, town or county officers; and provided, furthermore, that said loan shall not with their existing liabilities, exceed one-fifth of the value, as shown by the most recent assessment, of the personal and real estate of said district.

Which, giving rise to debate, was laid on the table under the rule.

Mr. VERPLANCK—I offer a resolution and ask that it lie on the table.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That provisions adopted by this Convention shall not be referred to the Committee of Revision so long as a motion to reconsider the same is pending.

The PRESIDENT *pro tem.*—This resolution will lie on the table at the request of the mover.

Mr. VERPLANCK—I offer another resolution.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That each constitutional provision heretofore referred to the Committee on Revision be printed and placed on the journals of the members of this Convention as soon as practicable, and that hereafter when any provision shall be approved by the Convention and referred to the Committee of Revision, the same shall be printed and placed upon the journals.

The PRESIDENT *pro tem.*—The Chair will inform the gentleman that a similar resolution has already been adopted.

Mr. ARCHER—I wish to ask leave of absence for myself for Monday evening.

There being no objection, leave was granted.

Mr. AXTELL—I offer this resolution, and ask that it lie on the table.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That the Committee on Revision be and hereby is instructed to strike out the first section of the article reported by the Committee

on Counties, Towns, etc., as amended in Committee of the Whole and adopted by the Convention.

Which was laid on the table.

Mr. GROSS—I offer a resolution, and ask that it lie over under the rule.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That the Committee on Revision be directed to strike from the article on organization of the Legislature, etc., the words "except aliens," wherever they occur.

The PRESIDENT *pro tem.*—This resolution will lie on the table at the request of the mover.

Mr. REYNOLDS—I call up the resolution I offered yesterday in relation to county treasurers.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That the Committee on Revision be directed to insert in the article on town and county officers some provision under which county treasurers shall be subject to the same conditions as regards security for the performance of their duties and removal for malfeasance, as is provided in the first section of said article for the officers therein named.

Mr. REYNOLDS—On looking over the article which has been adopted by the Convention, I notice that in the first section provision is made that "sheriffs, clerks of counties, including the register of the city and county of New York, and the registers of deeds in all the counties where such registers are now or may be hereafter authorized by law, coroners and district attorneys, shall be chosen by the electors of the respective counties once in every three years, and as often as vacancies shall happen. Sheriffs shall hold no other office, and be ineligible for the next three years after the termination of their offices. They may be required by law to renew their security from time to time, and in default of giving such new security, their offices shall be deemed vacant." Certain other officers are required to give security, but no mention is made of the office of county treasurer in the first section. In the second section it says: "All county officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of the respective counties, or appointed by the boards of supervisors, or other county authorities, as the Legislature shall direct." Now, in many of the counties the county treasurer is elected by the people, as he is in the county of Monroe. Under the article as it now stands, county treasurers would not be required to give security. The county boards would have no authority to require it, as they are elected by the people, unless some such provision is inserted in the article. In the county of Monroe, where the treasurer is elected by the people, I apprehend there would be no power to require the county treasurer to give security, and there would be no means of removal by the Governor or other officer. In that county, some three years ago, our treasurer was a defaulter to the amount of one hundred thousand dollars. Though he had given security for the performance of his duty, the county has sustained a loss to the amount of his defalcation. It seems to me it is a very important matter, and should not be omitted from this article.

Mr. WICKHAM—I would state that the office of county treasurer is not a constitutional office. It is wholly under control of the Legislature, and if the Legislature has never made any provision for the removal of that officer, it is certainly in its power to do so, and it seems to me, as long as the office of county treasurer is not made a county office, there is no necessity for the amendment proposed by the gentleman from Monroe [Mr. Reynolds], and I ask that it be laid on the table.

Mr. BICKFORD—I am preparing an amendment which is nearly completed, and which I offer. It is a substitute for the resolution offered by the gentleman from Monroe [Mr. Reynolds], and it reads as follows:

Resolved, That the Committee on Revision be instructed so to amend the article in relation to county and town officers, so as to make the county treasurer appointable by the board of supervisors and removable at their pleasure.

In most of the counties, as members of the Convention are aware, large sums of money are in the county treasury, and it seems to me proper and very desirable that the office of county treasurer shall be one within the control of the board of supervisors, and immediately under their thumb, as it were, subject to their control and supervision; that he should be appointed by them and removable at their pleasure, and of course be required to give such security as they shall require. In many counties the office of county treasurer is an office that many gentlemen of wealth and competence would accept without any compensation whatever. They would be glad to accept it without any fees or any emolument, merely for the temporary interest which the money in their hands would bring in, and this interest they now have and they receive it in addition to the considerably large fees that are paid them. If this was an office in the appointment of the board of supervisors, and under their control, large sums of money would be saved to the people, for in almost every county of the State, the office would be accepted without any fees being paid. A man is elected treasurer for three years under the existing law, and is not removable unless he commits some crime, or some charges can be sustained against him; and he is entitled to draw fees. In our county, for instance, there are many men perfectly competent for the office of county treasurer who would accept it without any fees whatever, and give ample security.

The question was put on the amendment of Mr. Bickford, and it was declared lost.

The question was then put on the amendment of Mr. Reynolds and it was declared carried.

Mr. GREELEY—I offer this resolution and ask that it be laid on the table.

Resolved, That the rules of this Convention be so amended as to abolish the Committee of the Whole, with all requirements that reports be considered therein.

Which was laid on the table.

Mr. KRUM—I offer the following resolution and ask that it be laid on the table:

Resolved, That the select committee to whom was referred the article on "counties, towns, etc.," be instructed to amend section one by add-

ing thereto the following: "This section shall not apply to any company or corporation in existence at the time of the adoption of this Constitution."

Which was laid on the table.

Mr. BICKFORD—I offer the following resolution, and ask that it lie over, as I desire to debate it:

Resolved, That the Committee on Revision be, and they hereby are, instructed so to revise the first section of the article reported by the Committee on Counties, Towns, etc., as amended in the Committee of the Whole and adopted by the Convention, as to make the said section inapplicable to railroad corporations.

Which was laid on the table under the rule.

Mr. LOEW—I offer the following resolution, and ask that it lie over under the rule:

Resolved, That the Committee on Revision be, and they are hereby, requested to amend that section of the report on town and county officers which relates to the election of registers of deeds in certain counties shall be required to give security for the faithful performance of their duties.

Which was laid on the table.

Mr. GREELEY—I offer the following resolution, and ask that it lie on the table:

Resolved, That the Committee on Revision be instructed to so amend the article for prescribing the organization of the Legislature as to provide that members absent from the sittings of their respective houses shall forfeit ten dollars per day, to be deducted from their pay.

Which was laid over at the request of the mover.

General orders were reached in the order of business.

The PRESIDENT *pro tem.*—The Convention will now resolve itself into Committee of the Whole on the report of the Committee on the Pardoning Power.

Mr. POND—The Chairman of that committee [Mr. M. I. Townsend] is absent, and I move, if in order, that the consideration of that report be postponed until his return.

Mr. LEE—I do not know but what it would be proper to defer the action of the Convention for that reason, but the report of the committee embraces simply the corresponding portion of the old Constitution and recommends its adoption. There are no new provisions recommended by that committee which would need the advocacy of the Chairman of that committee.

Mr. POND—I withdraw my motion.

The Convention then resolved itself into Committee of the Whole on the report of the Committee on the Pardoning Power, Mr. SCHOONMAKER, of Ulster, in the chair.

The SECRETARY then proceeded to read the section reported by the committee as follows:

SEC. —. The Governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason he shall have power to suspend the execution of the sentence until the case shall be reported to

the Legislature at its next meeting, when the Legislature shall either pardon or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the Legislature each case of reprieve, commutation or pardon granted; stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

Mr. T. W. DWIGHT—I desire to propose a substitute for the section reported by the committee.

The SECRETARY then proceeded to read the substitute of Mr. T. W. Dwight, as follows:

There shall be a board of pardon, to consist of five members, two of whom shall be judges of courts of record, or citizens who have been such. The members shall be appointed for five years, by the Governor, with the consent of the Senate, and they shall be subject, like all State officers, to impeachment. Their compensation shall be settled by law, as also that of the secretary and other persons whom the board may employ; if any, according to law. In no case shall either of them be allowed to receive fees. No pardon shall be issued by the Governor before trial and conviction, nor without expressing whether it reinstates the pardoned person in all his political rights as well as in his civil rights; nor without the consent of at least three members of the board of pardon. A written report why the consent of the board is given or withheld shall accompany the consent or denial in each case. The Governor shall transmit to the board all the papers which he may have received relating to a pardon asked for before the board makes any decision. The board of pardon shall keep a record of its minutes, and make an annual report to the Legislature of everything it shall have officially done during each year.

Mr. T. W. DWIGHT—This substitute was prepared by the New York Prison Association for submission to the Convention, under the direction of the chairman of its sub-committee, Dr. Francis Lieber, who has paid special attention to this subject of pardons. As I did not anticipate that this subject would be presented this morning, I have not prepared myself as fully as I would like upon the reasons that have led the committee to present this plan. But I will present such considerations as occur to me at the moment why there should be a board of pardons, and why there should be some check upon the action of the Executive. Now, what is the pardoning power? In its nature it consists in an interference with the action of existing law. The regular and steady course of justice is interfered with in a particular case. Now, we have been accustomed to think that this pardoning power should be vested in the Executive. We will dwell for a moment on this consideration whether there is in the nature of things any reason why the pardoning power should be vested in the Executive rather than in any other department of government. We, I think, have come to this conclusion, that the pardoning power belongs to the Governor from our inherited ideas connected with the working of the English government. The law supposed to emanate from the sovereign power

has been violated, the sovereign power has been offended. It is the theory of monarchical governments that the same power which originated the law has the right to dispense it, and the right to see that it shall be carried into effect. Therefore, in that class of governments, the King is supposed to be the source of judicial power, "the fountain of justice," and to have vested in him the right to interfere with the regular, steady administration of the courts. Now, when we came, in this country, to frame our Constitutions, we were possessed, to a certain extent, with these English monarchical ideas. We had in our minds the notions that came to us from the operation of the common law so familiar to us. As our forefathers brought with them the English language, so they adopted the common law. Each of them seemed equally necessary and were equally familiar. Therefore we adopted in our Constitutions the notions of the common law, and among others this idea that there necessarily belongs to the Executive the right to exercise the pardoning power. Now, under our system, where we have an entirely different theory of the administration of justice, there is no necessary reason why the pardoning power should be vested in the Executive. We, therefore, may look at the subject without embarrassment, observing whether there are certain reasons why it should not be vested in the Executive, or whether it should belong to a board. What are some of the considerations connected with the exercise of the pardoning power? No person who has paid any attention to this subject can fail to be convinced that there are cases in which the pardoning power ought to be exercised, where it cannot safely be dispensed with, when its exercise cannot be avoided. This necessity grows out of the defects of our nature; those defects appertain to all things, and therefore to the administration of justice. There will be special occasions in which the administration of general rules will work harshly, will work unequitably, and therefore there must be something analogous to the action which is said by some to have originated the courts of equity. We are told by Grotius that "equity" was first applied to cases where the law by its universality has proved deficient. There must be something like this in the general administration of justice, and therefore the necessity of the pardoning power to rectify any evils that may arise. Therefore I admit the pardoning power must exist somewhere. I do not pretend to deny that; the only question is, whether it shall exist in the Executive or some board, or be vested in some other way than the one to which we have been accustomed from our ideas of the common law. There are some evils which attach themselves to the administration of the pardoning power as vested in the Executive. This prison association to which I have alluded has addressed, within the last year, a circular to a large number of the ex-Governors of the various States (not the existing Governors, because it was supposed to be not quite delicate to question them in respect to a power they were exercising) in regard to the exercise of this power. They all tell us that it is attended with great difficulties; that there are evils connected with its administration, although many of them say that they are

not clear as to the mode of rectifying these evils. Now, what are the evils as found in the practical workings of the system? One of the difficulties connected with the administration of this power by the Governor is this: He is, personally, always accessible for applications of this kind. The Governor in our country, not like the Executive in other countries, who is, to a certain extent, inaccessible and excluded from ordinary observation and ordinary conversation, is present with us at all times and readily approached. His ear is always open and willing to listen to applications of this kind. Consequently, there is a temptation on the part of convicts and their friends to ask continually for pardons. The present Governor of this State said to me that for a long period the regular daily applications to him for pardons averaged six or eight per day. Now, if we had a board of pardons it might be so constituted that it would not in this way be always accessible. Its members might meet once a month, or three or four times a year, as the case might be, to listen to these applications, so there would not be this continual demand for pardons as in the present working of the system, nor the same temptation to grant them by reason of incessant and persistent importunity. Then, again, it is found, in the practical administration of criminal justice in the prisons, that the opportunity on the part of prisoners to make these continued applications greatly interferes with their conduct and keeps their minds excited. There can be no steady, regular working of prison discipline, until the feeling exists on the part of the prisoners that when they are once sentenced, as a general thing, as a rule, there can be no change, no remission in that sentence; that it is a decree that has gone forth, well nigh irreversible, except for special and extraordinary reasons, that they shall be inclosed within the iron gates of the prison until their time is out, until the sentence which society has placed upon them has been entirely finished and completed. When there is this free opportunity for obtaining pardons, there is a restlessness and feverishness in the mind of the convict which has its influence—its most deleterious and disastrous influence upon penal discipline. It prevents the operation of those reformatory influences which are, according to modern improved theories, the great influences to be brought to bear upon prisoners. They need to be put in that position that they will think there is no hope for them except to serve out their time, and then the reformatory influences which are brought to bear upon them have their legitimate effect. On the other hand, if they are in that condition that they feel that applications for pardon will be regularly and continually entertained, the disposition to reform is in a great degree lessened. I have conversed personally with great numbers of wardens of the prisons and penitentiaries of this and other States. I have universally heard it said that the feeling in a prisoner's mind that he might be pardoned has a most injurious effect upon him. I believe the constitution of a board of pardons would, in a very considerable degree, rectify this evil. There is one other evil attendant upon the prison discipline system to which I would like to call attention; and that is this: many

say that the Governor is often induced to grant pardons from irregular, political and other influences. It ought to be said, on the other hand, it is a very great evil that the Governor is also induced to withhold pardons on that ground. There are frequently cases appearing, a few weeks before election, in which there ought to be a pardon, in which the reasons for it are clear and convincing. Yet what does the Governor do? I do not speak of any present Governor, but only of the working of the system. What does the Governor do? He knows some political complaint will be made of his exercise of that power. It will be said he is opening the prison doors; that he is allowing men to go at large who ought not to be set free. What does he do? He shuts up the fountain of mercy; he does not allow a pardon to be granted. So we suffer in two directions; the granting of pardons when they ought not to be granted, and the refusing of pardons when they ought to be bestowed. And that is a point which cannot be reached in any way. No influence can be brought to bear in such cases as that. We may hold the Executive responsible for granting improper pardons, but who will hold him responsible for not granting a proper pardon? How shall that be done under our present system, left as it is entirely to the Executive discretion? Now, it seems to me this is one of the principal evils which exist in the present system. While we admit that the pardoning power ought to exist as being necessary in every State, yet its accompanying evils are those which I have mentioned; its deleterious influences upon convicts, and the fact that improper pardons are often granted, and proper pardons refused. Now, what may we be supposed to accomplish if we establish a board of pardons? In the first place, it is reasonable to suppose that each case will have something like a judicial examination, which the Governor, burdened as he is with his ordinary duties, cannot bestow. This board of pardons, if properly constituted, will consist of experienced men, no doubt in part of men who have been judges of our courts. It would be well to have a rule to this effect, that no case of pardon shall ever come before them except upon a petition, and that petition shall state the case, and the reasons why a pardon is applied for. Then we will have a guarantee that there shall be some grounds for a careful examination of the case. Then this board will take up the case and examine it, and see if there are any reasons why a pardon ought to be granted. Then they are obliged by this substitute which has been submitted to make a report of their reasons; they are obliged to state why they grant pardons, and why they refuse them. Thus we will be able to meet these two great difficulties which have been suggested. The difficulties that I have mentioned were that pardons were granted when they ought not to be granted, and refused when they should be bestowed. Now, if we have a board of semi-judicial character, if you please, they will be obliged, when a case is presented to them on a petition, to come to a conclusion and give their reasons for it. Thus there will be a check upon any irresponsible, irregular action. This section further requires that these reasons should be pub-

lished, so if a pardon is granted irregularly, and without proper cause, we shall know it, and public opinion will be brought to bear upon it. Under the present system the Governor gives no reasons for his pardon. They are locked up within the gubernatorial breast, and the public have no knowledge whatever of the motives which operated upon his mind. We all know what great benefit there is in judicial cases of requiring a judge to give his reasons for an opinion. He cannot well give an arbitrary opinion in such a case as that, for his arguments will be sifted by the profession to which he belongs, and if they are not legitimate and proper they will meet with condemnation. But where a person gives no reasons it is very difficult to condemn him, for we do not know what influences may be brought to bear upon him that we cannot discern. Now, in all these considerations, it is not intended that the Governor shall be entirely discharged from responsibility. This board of pardons will, of course, report to him the reasons for their conclusions. It would be expected, in ordinary cases, in the regular working of the system, that the Governor would be content with these reasons. Whenever there was any special case he would have an opportunity to examine it himself. He would be relieved from the examination of most of the cases, and would only need to look particularly into those where there were some special reasons why he should give them attention. So, while this board are to examine this class of cases, there is still a check upon their action in the fact that the Governor is ultimately to take the responsibility upon himself. It would, however, enable him in the ordinary cases, to say: "This subject has been in a manner judicially examined; I will repose upon that examination; but in all special, extraordinary cases, I still take upon myself the responsibility." For these reasons I am of the opinion that this plan submitted by the New York Prison Association, through the chairman of the sub-committee on pardons, is worthy of the attention of this committee. Whether in all its details it may not be amended, I do not say; but the main principle that there shall be a board of pardons I believe to be a valuable one, and one that will stand the test of examination.

Mr. GREELEY—I desire to move a substitute for the proposition of the gentleman who has just addressed the committee, which I will read. It has been the subject of consultation with several persons who have experience in this matter; it met generally their approbation. It is in these words:

SEC. 2. The surviving ex-Governors of this State still residing within her limits shall constitute a council of pardons, and shall meet statelately at the Capitol on the first Wednesday of January, April, July and October in each year, and as much oftener as the Governor shall require them to do, to counsel and advise him on the subject of pardons; when he shall lay before them every case of application for pardons which may seem to him deserving of their consideration. The secretary of the Governor shall attend their sittings as clerk, and shall keep a journal of their deliberations and decisions, and shall certify the correct-

ness of the same; which journal shall be deposited at the executive chamber, and shall be open to public inspection. It shall be the duty of the Governor to pardon all persons whom three-fifths of the council herein provided shall officially certify to him as in their judgment deserving of such favor.

§ 3. Each member of the council of pardons shall receive a compensation of fifty dollars for each regular or called session of that council which he shall attend from its opening to its close. Now, I will in a very few words say why these Governors should be designated for this service. They have been hearing these applications for pardons in that chamber every day from the beginning to the end of their respective terms. They are familiar with the names and have some knowledge of the characters of a large portion of the criminals of the State. When the application of an old offender shall be presented, one of them who had known him would say, "Why, that man is an old thief; I had him on my application list some years ago." Another would say, "He is an old case; I guess we had better let him stay." You may get a new council who will not be half so well qualified by knowledge, by experience, and by familiarity with this service, as a council, composed simply of the surviving ex-Governors, called by the existing Governor whenever he shall require them to meet. They can take up a case and give it that deliberate examination which the Governor cannot, in the hurry of his duties. I, therefore, with very few words, will ask the committee to consider this proposition, not doubting that it may be improved. It seems to me that this project of making a new set of officers, requiring new salaries, new accommodations, is not a good one. Take our ex-Governors, who are men whom the people have themselves elected with reference to this very service, who have had experience; whom the people would be glad to see once in a while at the capital and recognize as men who have done their faithful service in times gone by.

Mr. GOULD—It seems to me the objection to the plan proposed by the gentleman from Westchester [Mr. Greeley] is, that it is conceivable that there may be no ex-Governors at all; they may all be dead, so a case may arise where there will be no board of pardons whatever. I had prepared an amendment which I will read; and if the one now before the Convention fails I will offer it at the proper time. It is to come in after the word "pardons" in the sixth line. "No such pardon shall be granted until the application for it shall have been submitted to the examination of a board of pardons to be provided by law, nor until a full report of such board has been submitted to the Governor." I concur with very much that has fallen from the lips of the gentleman from Oneida [Mr. Dwight] in reference to this subject. But I am opposed to that part of his amendment which seeks to take the power of pardoning from the Governor. I think he is the best officer in whom that power can be vested. I believe all the ex-Governors, at least those with whom I had conversed, have expressed a desire that that power shall still remain in the hands of

the Governor, for reasons which they deem satisfactory. I believe that the determination of the Convention is announced by the various votes that have been taken here, not to change the old system any further than shall seem absolutely necessary; that they will make no alterations unless there are some good reasons for it. The people of the State have been, ever since the State has been in existence, accustomed to look to the Governor as the fountain of mercy and the source of pardon, and they will not be satisfied if he is deprived of it. Another reason why it should be continued in the hands of the Governor is, that in consequence of the exercise of that power he is led to look more closely and more carefully into the working of the criminal administration of the State than he would otherwise do. Most of the Governors have said to me that from the pressure of duties upon them they have been unable to look into the working of this system as carefully as they would have desired to do, but I have no doubt it has been incidentally brought to their knowledge in the exercise of the pardoning power, and it is mainly through this avenue that they have learned what they actually know about it. I think this is a very good practical reason why the power should be continued with the Governor. Now, the difficulty with the present system, is, as has been well stated by the gentleman from Oneida, that it is physically impossible for the Governor to give that thorough examination to every application for pardon. There is, on an average, six applications for pardon every day throughout the year.

Mr. LEE—The gentleman will observe the whole number of applications for pardon during the last sixteen years, by the record, was five thousand six hundred and forty-five, an average of three hundred and fifty-three per year—less than one per day.

Mr. GOULD—Governor Fenton assured me that the average was about six per day.

Mr. LEE—This is from the files.

Mr. GOULD—The average mentioned by Governor Fenton was corroborated by ex-Governor Seymour. Both of them verbally assured me that that was the average. Now, it is utterly impossible for the Governor to look up these cases, to look over the minutes of the judge, and inquire into the previous character of the offender, and make the preliminary inquiries in order to make the exercise of the pardoning power safe and salutary. If a board shall be provided, charged with the duty of making all requisite preliminary examinations, they have to examine the facts and allegations stated in the petition, and to listen to the counter allegations which the district attorney and those who are interested in the subject may give, and make a written report showing the grounds and circumstances of their pardon. I think all the present difficulties will be removed, and that the power may be safely exercised. Practical illustrations might be given of the danger of Governors being deceived in the operation of the existing system. The applications, of course, are all *ex parte*. District attorneys are very careless. I know one very notorious instance in the exercise of the pardoning power, where the Governor had repeatedly writ-

ten to the district attorney, and was unable to obtain any direct reply from him upon the case. Therefore all the knowledge the Governor had in this instance came from the attorney of the prisoner. Although some of the facts upon which the pardon was granted were official, yet if a careful personal scrutiny had been given, that pardon never would have been granted. Such is the opinion of the Governor himself. I do not know of any better way to provide for the exercise of the pardoning power than that which is contained in my amendment. If it shall be successful, it is my intention to introduce another resolution coming in after the word "reprieve," in the fourth line to this effect: "Every pardon granted by the Governor shall express the reason for granting it upon its face." That will be a very excellent provision, in my opinion. It will insure the greatest caution upon the part of the Governor, for the reason for granting the pardon shall be expressed in writing.

Mr. T. W. DWIGHT—The gentleman from Columbia [Mr. Gould] misunderstood me in supposing that I desire to take the pardoning power away from the Governor. I only wish this board of pardons as auxiliary.

Mr. POND—The Committee on Pardons have deemed it proper, unlike the example of any other committee, to report for adoption to this Convention the article relating to pardons, as at present contained in the existing Constitution; not having deemed it wise to make any change or to recommend any alterations in the power as it is now lodged in the hands of the Governor. In examining this subject, there were some members of the committee who were at first in favor very much of some of the features suggested by the several gentlemen who have addressed the committee. In pursuing inquiries upon the subject, the committee have had recourse to, and have consulted with several of the ex-Governors of this State, and among others, ex-Governors Morgan, Fish, Seymour, and the present Governor, Governor Fenton, in reference to this subject, to ascertain, if possible, whether any change could be made in the lodging of this power, and any change in the limitations and restrictions under which it is now placed. The result of that consultation and examination substantially was this, an unanimous conviction on the part of the committee, I believe, that the power now is lodged in the right hands; that it is a power, as has been suggested by the gentleman from Oneida [Mr. T. W. Dwight], that represents in some way the sovereignty of the people—a sovereign power. It is a power called upon to determine when the operation of the general laws shall be suspended, and when the decrees made by that law shall be abrogated consistently with the safety of the State. Therefore, it is peculiarly proper that it should be lodged with the representative of that sovereignty, and with the only one, too, that is continually in session, namely, the Governor, and as has been correctly suggested by the gentleman from Oneida, one of the great reasons why it should be there lodged, is that the Governor is always accessible. I have failed to hear from the gentleman from Oneida any reason why we should lodge that power elsewhere, and in a body that is in session only at remote periods.

Sir, this is a power that should be lodged where it may be called into exercise at any moment, and not to be kept in abeyance for some judicial body to meet to call it into exercise, and which must go through, perhaps, with a formal retrial of the case before deciding upon an application. From the numbers of these applications, if we only constitute a court for the purpose of examining them, the court itself will be clogged, and it will be impossible to determine the cases that may come before it. It was the opinion of those ex-Governors whom the committee consulted upon this subject, with one exception, that this power is rightly lodged now, for the reason that it is now accessible, and the Executive ear is always open to listen to applications for Executive clemency.

Mr. GOULD—Will the gentleman [Mr. Pond] allow me to ask him a question? I would ask whether he was present at the joint meeting of the Committee on Pardons and the Committee on the Prevention and Punishment of Crime when Governor Seymour addressed them?

Mr. POND—I was present on that occasion.

Mr. GOULD—Does the gentleman recollect the question asked of Governor Seymour, whether he did not think that it was desirable to have an assistant board similar to the one provided for in the resolution I have read; and does he recollect the Governor's reply, that it would be desirable?

Mr. POND—I do not now remember that.

Mr. GOULD—He did so state.

Mr. POND—Very possibly. In regard to the question of a board, it is possible that Governor Seymour made the reply the gentleman says he did; but the interview with the Governor left the impression strong upon my mind that, whether there should be an advisory board or not, the sole power of exercising this right should be vested with the Governor. Now, in regard to having an advisory board, the committee received written communications from several of the ex-Governors who were addressed by the chairman of the committee, soliciting their views on this subject. Governor Morgan, in reply to a question in regard to where this power should be lodged, whether a board or council should be associated in its exercise with the Governor, stated that his experience and his observation were emphatically to the effect that no such board or council should be created, and he had observed its effect in other States where that practice had been adopted, and the result was, that in a council or board the members of which came from different localities of the State, each one would come charged with several applications for pardon from his own locality, and each would become an advocate of the applications from their respective localities, and instead of being an assistance to the Governor, they would in many cases, and had generally been, an incumbrance and inconvenience to the Governor. Instead of avoiding the lobby which it is said would, without such a board, approach the Governor and influence his action, many times improperly, that in a board or council they become a greater evil in this very respect, and in many States such boards have had for that reason to be abandoned.

Mr. GOULD—Will the gentleman allow me to ask him to what States he refers?

Mr. POND—Governor Morgan did not state, and I have not examined for myself.

Mr. GOULD—Does the gentleman know the working of this system in the State of New Jersey?

Mr. POND—No, sir; I am not acquainted with its operation there.

Mr. GOULD—Then I will state that it is exceedingly satisfactory.

Mr. POND—I cannot state how many examples New Jersey will furnish for us to follow. It may be in this case of pardons we shall follow her. But I submit that the reasons suggested by Governor Morgan are apparent; this power is one that is single, and should be vested in the Governor as a representative of the sovereignty of the people. The experience of the past is not to be mistaken on this subject. The report submitted to the Convention by the committee on this subject, it strikes me, is very accurate in its statement of the reason for reposing this power in the hands of the Governor, and suggests the correct idea upon this subject. I will read. It is said in this report:

"By the present Constitution and by the third section reported by the Committee on the Governor and Lieutenant-Governor, and adopted by the Committee of the Whole of this Convention, it is made the duty of the Governor to 'take care that the laws are faithfully executed.' This responsibility is not shared by the Governor with any other functionary. And, as this duty is devolved on him alone, it is the Governor alone who is prepared to judge how far it may be safe, from time to time, to remit the penalties imposed upon those convicted of crime, consistently with the preservation of the public peace and with the general 'faithful execution of the laws.'" It was this consideration, doubtless, which originally led the people of the State to invest the Governor with the exclusive power of granting pardons, and the same consideration has doubtless led to the lodging of the power of pardon in the same hands in twenty-nine other of the States of this Union."

Now I have no doubt that the idea suggested in the report is a true one, and that this general consent to lodge this power in the Governor is a recognition of this idea that the Governor being charged with a faithful execution of the laws is the proper depository of this power, and is the functionary intimately associated and connected with it, and with whom it should be lodged. I have already said that to have this power lodged in a board, to meet but at stated intervals, for instance, as suggested by the gentleman from Westchester [Mr. Greeley] would, it seems to me, be incongruous in the extreme. The pardoning power should be accessive at all times, and ever ready to hear all applications that may be made to it.

Mr. GREELEY—I proposed four stated sessions a year, and as many more as the Governor chose to require.

Mr. POND—This power is one that ought to be possessed by the Governor, or by an individual officer, so that whether the board is in session or not, the poor convicted criminal, incarcerated in the

State prison, should have the right to approach it all times. It seems to me it would be tantamount to a denial, in certain cases, of the right and privilege of making an application for pardon at all to thus lodge it in a board of council.

Mr. GREELEY—I desire not to have time wasted in the discussion of an unreal objection. I did not propose to preclude the Governor's granting a pardon at any time, should he desire to do so.

Mr. POND—I did not hear distinctly the whole proposition of the gentleman, but if it is as he has stated it, it certainly relieves it of many of its objectionable features. The remaining objectionable feature is the one that proposes to have this responsibility divided. It should be a responsibility resting upon a single head, and then it will be discharged. And an additional objection to the proposition offered by the gentleman from Oneida [Mr. T. W. Dwight] is, that it is a substitute, and, if I recollect, does not provide where the pardoning power shall be lodged. If I understand the proposition submitted by that gentleman, it does not provide that anybody should have that power. It says the Governor shall not issue a pardon unless upon a vote of the majority of the body proposed to be substituted in that section. But it does not give the pardoning power to anybody if I rightly understood the section as read by the Secretary. If we should adopt it, we should not have the power to pardon at all except by implication. Now, in regard to giving reasons for granting pardons I think that would be a vicious clause to put into the Constitution. The Governor, it seems to me, should be open to receive all applications and for all reasons; he may have reasons that ought to be made public; he may have reasons that ought to be kept private. The Governor should not be required to state all the reasons that operated upon his mind in granting a pardon in any particular case. There are thousands of cases continually arising where the interests of the public would forbid making public the reasons for granting pardons. The Governor of the State of New York, in my judgment, is generally a person in whom the people have confidence. He ought to be such a man, and in theory must be such a man. No place can be found more appropriate for the lodging of this power, nor more safe, without requiring publicity to be given to all the reasons that may operate upon his mind where, in any particular case, he shall issue a pardon. The committee, as I said before, reported this clause in the Constitution as it now exists. If it can be bettered I presume there is no member of the Committee unwilling to have the Convention to try its hand at it. There have been various elaborate reports made to this Convention by which new provisions have been prepared and submitted by able gentlemen, and whose schemes were perhaps theoretically more perfect than those contained in the present Constitution. But no quicker were they reported to this Convention than they were—

A DELEGATE—Scalped.

Mr. POND—Yes; scalped. They have been scalped, and beheaded, and their legs cut off, and bodies burned, and finally the Convention has

come back to this point, that this Constitution under which we now live has operated beneficially and been a good Constitution, and that it should be altered only in the respects called for by the people, or by some popular necessity. I submit that the exercise of this pardoning power, as lodged in the present Constitution, has not been abused. I submit it has been exercised as discreetly as any other power committed to any other body under this Constitution. I object, for one, to any change in the Constitution, unless some reasons can be assigned showing the expediency of introducing new experiments—new schemes in the Constitution we are to frame in respect to the subject of any power as now lodged, and which is working well and satisfactorily to the people. In my judgment we had better adopt the Constitution as it now exists, and against which there is no real objection. But especially do I object to those amendments and schemes which have been adopted in other States, and which have failed to give satisfaction in them.

Mr. LEE—I do not propose to detain the committee by any extended remarks. But I call their attention to the fact that this Convention was called to make such amendments to the Constitution as would relieve the people from the improper operation of laws under the existing Constitution. I am not aware that there has been any very special complaint made touching the pardoning power. As one of the committee I may say that I have understood that there should be assistants provided, whereby the Governor might be enabled to discharge his duty in the exercise of the pardoning power, without so much personal labor. I had entertained the idea—expressed by my friend on the left [Mr. Gould],—that cases of application for pardon had multiplied so exceedingly that the Governor was entirely overborne with the single duty of examining the records. But it appears that for the last sixteen years, on an average there has been a little less than one application per day, and about one hundred and fifty (on the average) pardons are granted during the year. The only question to be settled by this committee is, where we will deposit the pardoning power; whether it shall be with the Governor (I believe all agree it shall finally center there), whether it shall remain subject to his action and control, or whether he shall be assisted by an associate board of some sort. As I have remarked heretofore, when I entered upon the discharge of my duties here, I believed the Governor should be assisted by some associate board. I think that idea was shared by every member of the committee. But the more we examined the question and the more the facts were gathered up bearing on the case, the more we became convinced that it was now safely lodged, and that it was best to submit the whole matter to the discretion of the Governor. In proof of the soundness of that determination I have only to refer to the fact that in twenty-nine States of this Union the whole power is left with the Governor. So we have the judgment of the bodies politic of twenty-nine States in favor of thus lodging the pardoning power, and certainly that is a fact worthy of

some consideration. Then, again, ex-Governor Seymour was consulted. He kindly came before the committee and stated that, in his judgment, the power should be left just where it now is. He stated that sometimes the duties of the Governor were onerous and hard to be borne, but that some one must discharge the duties and he believed no one was better fitted to discharge them than the Governor. The only suggestion which he made was that adequate means should be placed at the disposal of the Governor so that when he deemed it necessary he could employ an attorney to gather up and embody the facts in an individual case that might be presented to him for his action. That was all he needed. From the very nature of the position of the Governor, acting in the capacity of Governor and charged with the duty of seeing that the laws are faithfully executed, we may expect he will discharge his duties conscientiously. It seems to me that the information and means necessary to enable the Governor to act intelligently are better gained by giving him authority to employ such agents for this purpose. I understand the Legislature have, since the administration of Governor Seymour, extended this aid to the Governor, so that the present Governor now possesses all the means, all the aid adequate and necessary for the faithful discharge of his duty in this respect. The gentleman from Oneida [Mr. T. W. Dwight], in the advocacy of this board, stated, it seemed to me, rather in the nature of a complaint, that the ears of the Governor are always open, and that was the reason the board should be established. Now, if there is any reason in the world for the vesting of this power anywhere it should be vested where the ear of clemency is open, however great the offender may be. Should he turn coldly from an application for pardon simply because the applicant happens to be the victim of a conspiracy, and be allowed to remain in prison and drag out a miserable existence simply because he cannot get access to the pardoning power? Now, sir, the objections that have been referred to by the gentleman from Saratoga [Mr. Pond], as being raised by Governor Fish in a communication to the committee, I think, are well taken. But inasmuch as we did not come to amend the Constitution in those regards where there are no complaints—and there have been none made in this report—the committee reported the old section of the Constitution. In view of the fact that this practice prevailed in 1829, constitutes additional authority for continuing it still in that officer. In view of the fact three or four of our ex-Governors are of the opinion that this power should remain lodged where it now is, it receives additional force. Weight is also given to it from the fact that there is only one pardon granted, on an average, to each sixteen applications, and that of the whole number of applications to Governor Seymour, only one hundred and fifty were granted; and Governor Seymour believes that if the Governor has the power to employ agents to obtain information, he will have all the means necessary to enable him to act wisely. It seems to me this committee must come to the conclusion that the Committee on Pardons came to, as they did, unanimously

when they reported the existing provisions of our present Constitution. I hope unless some new provision shall be suggested for the consideration of this committee, which shall be deemed better, the existing provision of the Constitution will be adopted.

Mr. PRINDLE—I desire to say but a very few words on this subject of pardons, as one of the members of the committee who signed the report. I desire to make two or three suggestions. I regard it as rather unfortunate that the able chairman of this committee [Mr. M. I. Townsend], who has probably given the subject more consideration than any other member of the committee, is not here to give his reasons for the report which has been made. I have listened with interest to all that has been said on this subject, both before the committee by those who have had experience in regard to this matter, and by members of this committee who have addressed us on this occasion. But I have not been convinced that any better system can be devised than the one we have in our present Constitution, and the one which has been reported by the committee. I am opposed to all these boards of pardons that are suggested. I believe, sir, that they would simply become, in the end, courts of last resort, and not boards of pardon. When boards are created, the responsibility is divided. Boards, too, naturally drift into ruts and forms. A secretary is necessary; minutes must be kept, everything must be in proper form, and a poor man who has been thrust into our State prison, must have his application in proper form before he can have a hearing. It must come within certain rules prescribed by that board. He must come within certain principles and written regulations prescribed by the board. I think it would naturally result in this. I do not wish to see any such court of pardons in this State. I prefer that one man, the highest officer in this State, shall have the pardoning power in his hands; that he shall not be confined to any set of written rules; that a person applying should not be confined to any rules and regulations; but that he may come before the Governor and have a hearing. Where can you find better hands, sir, in which to place this power than those of the Executive of the State—the person holding the highest office in the State—the chief magistrate of the State—the Governor, whose duty it is to see that the laws are faithfully executed, and who will best know whether a criminal may safely be pardoned or whether he may not? As the Constitution exists at present, the poorest convict in the State prison may have his case heard before the Governor. A single letter from him, or from a friend of his, to the Governor, a simple petition is all the form that is necessary to bring his case there. The Governor can send to the county or circuit judge who tried him and to the district attorney and gather the information that he considers necessary; and he can decide upon the question upon the informal application of the convict. Besides this, sir, the wife of a convict may come before the Governor and state the case to him; she may state it, perhaps, with tears in her eyes, supplicatingly, and the Governor may be weak enough sometimes to be overcome, perhaps when he

ought not to be; but I ask if there is a member of this committee who would deprive the wife of a prisoner, or a child of a prisoner, or the mother from coming before the Governor and asking for his pardon. It would be virtually done if you have either one of these boards that are suggested by the gentleman from Westchester [Mr. Greeley] or by the gentleman from Oneida [Mr. T. W. Dwight]. The friend of the prisoner would be deprived of the privilege of coming before one man—

Mr. GREELEY—I beg the gentleman to remember that I did not propose to deprive the Governor of the privilege of beholding a prisoner shedding tears; all that I say is, let the Governor turn over such cases as he has not time and opportunity to investigate fully and thoroughly.

Mr. PRINDLE—I understand perfectly well that the gentleman from Westchester [Mr. Greeley] proposes to allow these cases to come before the Governor; but I would ask, what would be the natural effect of that provision? When a friend of the prisoner came before the Governor what would he naturally say? He would say, "I have too much business on my hands to attend to these matters;" he would naturally wish to throw the responsibilities of the case upon the board of pardons; he would say to the wife or the daughter who comes knocking at the Governor's door, "You must go to the board of pardons; I cannot attend to these matters; I have too much business upon my hands." I ask members of this committee if that would not be the natural effect of creating a board of pardons. It seems to me, sir, that such would be the effect. As the law stands at present, the Governor is not confined by any set of principles, or any rules or regulations. He might be willing, and it might be best that a pardon should be granted that did not come within any set of rules or regulations. He will not act corruptly. It is almost impossible to conceive of a case where a Governor could find it in his heart to act corruptly when an application is made for a pardon. He listens like a parent, like a father, and he can pardon in the true sense of that word. I say, sir that your board of pardons would be a court, governed by rules, governed by principles, governed by regulations, and a case brought before it must necessarily come within those rules and regulations, or it would meet with an unfavorable reception—it would be rejected. It would be governed by those principles, sir, in the end, just as much as a court of law or a court of equity. I desire to see some power vested somewhere in this State that can listen freely to an application for pardon without being bound down by any of these principles or regulations. Besides, sir, if you have a board of pardons or a court of pardons, as it is called, it would come to be the practice that the board must have counsel; prisoners would appear there by counsel, and seldom otherwise. And a man in the State prison, or his friends, must be rich enough to employ good counsel to come before that board to plead his cause for him. What would be the condition of the poor prisoner who had not money enough to employ counsel to defend him in the courts in which he was tried, and counsel had to be as-

signed him by the court? I believe, sir, that in the end, he would have no means of appearing before that court of pardons, and presenting his case properly before them. And, sir, I am afraid that, if this court of pardons were created, there would be danger that there would be middle-men employed to exercise their influence and their power between the convict and the board. It is true, sir, that very reputable men might be selected for that position. It might be the case, sir, that afterward, corrupt men would be selected for that purpose, or it might be that corrupt men might gain the ear of that board of pardons, or of certain members of that board, and become influential with them, who would use their influence to put money into their own pockets, against the interests of the convict, against the interests of justice. It could hardly be that such could be the case when this authority is vested in the chief magistrate of this State. He, if he needs any assistance, will select men whom he knows to be true—who will represent the case rightly to him, who will not deceive him, who will not be corrupt, who will not be influenced by money. Some difference has arisen between the gentleman from Columbia [Mr. Gould] and the gentleman from Saratoga [Mr. Pond], in relation to what Governor Seymour said. I think the ideas that were enunciated by Governor Seymour at the meetings of the committee are faithfully stated in the report of this committee, and for the information of the committee I will read it. It reads:

"Ex-Governor Seymour was kind enough to come from his home to the capitol and personally explain to the committee the working of our present system, as witnessed by himself during his official experience, and to state to the committee that, in his opinion, although the possession of the pardoning power imposed upon our Governors the most laborious and painful duties which a man can be called upon to discharge, yet from the nature of our government the power could not be safely lodged in other hands, nor its responsibilities be safely divided. That all which, in his opinion, could be safely done to lighten a Governor's labors would be for the Legislature of the State to provide the means from time to time to enable the Governor to ascertain, through a suitable clerk or agent, the truth or falsehood of the allegations on which the applications for pardons are based."

According to my recollection, Mr. Chairman, that was the idea of Governor Seymour—that nothing could be done except to give the Governor power to obtain the information through a clerk or agent, which was necessary in order to decide upon the case. He did state that there was difficulty sometimes in getting appropriations from the Legislature, or that there might be difficulty; that the Governor was dependent upon the Legislature for the money that was necessary to obtain information in passing upon these cases, and he thought all that could be safely done to assist the Governor was to give him the means to procure this information. Now, the gentleman from Oneida [Mr. Dwight] stated that the evidence upon which pardons are granted ought to be made public and the principles upon which those

pardons are given stated to the public, in order that they might be known. I believe, sir, that that is not true in fact. I believe the reverse, sir, is true. I believe the Governor ought to have the privilege of granting pardons without stating his reasons to the public. I believe, sir, that the evidence and the information that comes before the Governor ought not to be made public in all cases. An application for pardon is made in a distant part of this State to the Governor, who hears the application on the one side, and numerous affidavits are made on the other side, and impeaching testimony is produced before the Governor on the one side and on the other; and the Governor is unable from the written evidence before him to get at the exact facts. Shall he not have the privilege, if he knows a man in that vicinity upon whom he can rely, and who has all the necessary information in regard to the matter, of asking for information from that man upon whom he can rely? Shall he be compelled, if he procures this information, to give it to the public? I say give the Chief Magistrate the largest power in these matters. Let him act upon his own responsibility, too; and I believe that, in ninety-nine cases out of a hundred, he will act honestly and from pure motives. Let him take the whole case. When you have a board of three or five individuals, or more, the responsibility is divided, and they do not give it that serious and earnest consideration that they should. They are relying upon one another; they are relying upon the opinions of one another; they have only a divided responsibility. But the Executive of the State feels that the case rests solely and entirely upon him; he gives it his earnest attention; he acts honestly and decides from pure motives. It did seem to me to be a strange idea of the gentleman from Oneida [Mr. T. W. Dwight] that there ought to be a board of pardons having stated sessions—four times a year, for instance. They certainly could not be in session all the time; and if a man is thrust into prison, no matter how innocent he may be, he must wait until the assembling of these stated courts before he can have a hearing. He must linger there in confinement and in disgrace for a quarter of the year before he can have a hearing before the board of pardons. The gentleman [Mr. T. W. Dwight] alluded to the feverish anxiety which is created in the minds of those who apply for pardons; and the rules and regulations of the prison, I think he said, were broken—or something to that effect—in consequence of this anxiety of those who made applications for pardon. The gentleman [Mr. T. W. Dwight], of course, knows far more in relation to that matter than I do; but I think if there is a state of anxiety created in the minds of prisoners, it were better than that they should be compelled to wait there in prison for a quarter of a year, more or less, until they can get their cases properly presented before a board of pardons. Cases would occupy a great deal of time, the evidence must be taken; they might be adjourned from term to term. I know that cases are sometimes delayed before the Governor. I know that the Governor has a great deal to do. But nearly all the Governors who have expressed their views upon the subject,

have concurred in the idea that the authority is exactly where it belongs. I believe, sir, that the Constitution should not be changed unless there is a demand for it. Unless we have seen evils result from any particular portion of the Constitution, we should let it stand. I think that altogether too much time has been occupied by this Convention in discussing amendments which have never been thought of by any large number of the people of this State, and from the subjects of which we have experienced no evils; and I think it would be dangerous to introduce into the Constitution, in regard to the subject of pardons, so radical a change as is proposed either by the gentleman from Oneida [Mr. Dwight] or the gentleman from Westchester [Mr. Greeley].

Mr. STRONG—I feel inclined to state my views to the Convention in consequence of my having had an extended experience in criminal cases. I was district attorney of the county of Suffolk for twenty years, during which it was my fortune to prosecute eight persons charged with murder, of whom six were convicted of murder and two of manslaughter. I afterward served for ten years on the bench of the supreme court, and I think I have had more cases of murder tried before me than any other judge in the State. I have come to the conclusion, from all that I have known in regard to applications for pardon, that the Governor and the Governor alone is the most proper person to whom these applications should be made. I grant, sir, that if the Governor could obtain no assistance it would be a burden that we should have, in our large population in this State, which very few Governors would like to encounter. But the Governor at present has the power, and for years past the practice has been that the Governor has had the power of commanding assistance—better assistance than he could have obtained from a board. The Governor was very much in the habit, when I was district attorney, of consulting with me on cases coming before him of applications for pardon, and I very freely gave my opinions to the Governor, and they generally prevailed with him. Whether he gave the subject much examination I do not know. In one case an application was made to me by Governor Clinton for a certificate whether it would be proper to commute a sentence for murder. I finally gave an opinion that it would be proper to commute it, from an apprehension on my part that it was very doubtful whether the convict was guilty of murder or manslaughter; and I gave a certificate that the proper ends of justice would be satisfied by the Governor's commuting the sentence to imprisonment for life, and he accordingly did so. There were numerous other cases—perhaps none of them so important as that in which I was consulted, and where I was called upon to give a statement of any material facts that had occurred upon the trial. I did so, and I presume the statements I made were of some assistance, because there were frequent applications made to me. After I had been promoted to the bench of the supreme court, I uniformly made reports, in cases of murder, to the Governor, stating the facts that occurred upon the trial; and the Governor uniformly acted in accordance with the opinion

which I expressed—whether from the force of the report I made or not I know not. I have had applications made to me in other cases besides capital cases—many of them sometimes a year, or three or four years, in fact, after the trial; and I have had occasion to refer to my papers, and have uniformly given to the Governor statements upon which I thought he could rely. The Governor has frequently had my advice as to the propriety of granting a pardon or commutation, or letting the law take its course, and I think in these cases his action coincided with my opinion. While I was in the court of appeals, in 1849, Governor Fish referred a case to me for my opinion (and I believe Governors generally have been in the habit of referring capital cases when he entertained doubts, to judges of the court of appeals)—a case of murder, in Buffalo. I brought the papers to me, and I examined every paper, although the documents were very voluminous, in a day; and I certified to the Governor that I had come to the conclusion that there was no point of law ruled against the prisoner which the defense naturally involved, and furthermore, that the evidence fully warranted a conviction. Although the papers on the application for a pardon were very numerous in that case, yet the Governor eventually refused to pardon the convict, and he was executed. If the Governor can obtain assistance in this way from those who have had experience in such matters, and have acted officially, it appears to me, we could dispense with a board of pardons. If the board should be constituted, the members in all probability would not refer any case submitted to it to those familiar with the case, they would have to rely very much on the papers presented, and such papers often are very imperfectly prepared in applications for pardon. I have had such papers sent to me frequently, and have found that they were not reliable. They were often made from statements of the convict or some of his friends, and statements made in them which I knew to be inaccurate, and I presume, if such a board relied solely upon the papers accompanying the applications made to them, there would be great injustice done. I conceive that, unless the board should resort to some assistance, as the Governors have been in the habit of doing, they would very often be mistaken with regard to the merits of an application. And I agree with the remarks of the gentleman who preceded me [Mr. Prindle], that there would be great delay unless the board should consist of men of ability and of standing, who are worthy of the station. It would be a very serious inconvenience to them to give up their ordinary business, as they would have to do, if they attended here constantly to consult with the Governor; and if they did not, there would necessarily be very considerable delay about the applications made to them. It is very often necessary to act promptly on applications for pardon. I have known of one instance in particular, before Governor Marcy, where it was necessary that the Governor should act promptly, without any delay. The reasons for the application for pardon it is perhaps unnecessary for me to state. It was of a character requiring immediate attention. If there was a board meet-

ing here quarterly or monthly there could not be that prompt action which is very often necessary in cases of application for pardon. My own experience has satisfied me that the Governor can, with the assistance which he can command, and which Governors generally do command, attend faithfully to this duty, and that he can do it without all the inconvenience which some have thought proper to ascribe to him. I know it is in his power to do it, and I think it is his duty to do it. I think it would be safe to vest the power in the hands of the Governor, but it would be quite unsafe to vest it in the hands of the board. We find that those who have filled—with the exception, perhaps, of one—the office of Governor, have been convinced that the Governor can attend to this business. The duties of many public officers are, doubtless, very onerous. The duties of judge of the supreme court are very burdensome, and yet public officers must encounter the burden, in order properly to perform their duties.

Mr. T. W. DWIGHT — Before the question is taken, I would like to reply to the suggestions that have been made by the gentleman from Saratoga [Mr. Pond], who urged as an objection to the board of pardons, that there would be a disposition in the localities from which any particular member of it should come, to call upon him to obtain pardons for persons living in that locality; thus there would be a species of log-rolling introduced. But that argument, sir, if it is good for anything, is good against any judicial body which may be organized. In the case of the court of appeals, for example, it cannot be supposed that the members will all be elected from one locality, they will be distributed over the State in all probability. Is there any sound argument in the position that members of that court will be interested in the cases that come from their own locality? Are we always to distrust men when we are proposing to give power? Is it likely that the class of men who will be selected by the Governor and Senate for this purpose, will be any more subject to such influences than judges are, as they are clothed, by necessity, with a quasi-judicial function. The same judicial qualities will undoubtedly be exercised by them as by judges when a case is presented before them. Therefore, it seems to me, such an objection as that is futile, and without significance. The gentleman from Oswego [Mr. Lee] says it is a great objection to this idea of a board, that it is not in continual session, so that applications may be made to it on the spur of the moment, and at all times. Why, sir, he overlooks this point, which I think is of great importance, that the opportunity for immediate application stimulates convicts to present cases, which, under a different system, would never be brought forward.

Mr. KERNAN — Does not the gentleman think, that where the responsibility is divided between three or five men, two men would be much more likely to be affected by sympathy, rather than by judgment, than if one man alone had to take the responsibility?

Mr. T. W. DWIGHT — I will answer the gen-

tleman before I have completed my remarks, but I wish to continue in the same line of remark I was making. I wish to observe that I have been told by the wardens of the State prisons in this State, especially the warden in Auburn [Mr. Augsbury] that a large portion of the money that is earned by the prisoners for over work is given over by them to inferior lawyers to enable them to apply for pardon, and there is a regular system whereby these persons make applications for pardons, although often defeated. They are stimulated to this course by the fact that no reasons are required for the action of the pardoning power, and in the general scramble, they hope that something may be obtained. Then, sir, in regard to the number of cases which are presented to the Governor. We have been told by some gentleman, that for the last six years they have averaged only one per day. The important point is not what the average was some years ago, but what it is to day. We have been told by the gentleman from Columbia [Mr. Gould], and I state that I have heard the same thing from Governor Fenton a year or more ago, that the applications to him are from six to eight per day instead of one per day. The question then is, not what they were formerly, but what they are now, and what the probabilities are that the Governor will be able to give due attention to these cases. This state of facts illustrates the desirableness of having some board of a quasi-judicial nature to examine into the cases. The gentleman from Chenango [Mr. Prindle], tells us there would be a great objection to the substitute, owing to the fact that the board would be obliged to have rules and proceed according to principles, and that it was altogether desirable that the pardoning power should not give any reason for its action. Sir, I am surprised at such a position as that. Why is it that the pardoning power should not give reasons for its action? There is in the case of the United States, no doubt that there may be "cases of State" where the President may properly pardon without giving reasons. This might happen in case of treason, for example, where it would be the most judicious course to pardon, and say no more. Those cases are exceedingly rare, under the State organization, where there will not in general be reasons of State for pardoning. The Governor only deals with cases arising under ordinary criminal jurisprudence. If there is a rebellion breaking out against the State government and the necessity for pardoning should exist, it is enough to say that there are "reasons of State" for pardoning the criminal; but when an ordinary case of criminal jurisprudence is presented, I can see no advantage in having the pardoning power so vested that there shall be no reasons given for its action. In regard to the question asked by the gentleman from Oneida [Mr. Kernan] whether there would not be a division of responsibility in the pardoning power if it was vested in a board rather than a single individual, I think the answer to that is this, that this board is obliged to give reasons for its action; I think it is the same as it is in a court, whenever we get a body of men that is obliged to give

reasons, we fix upon that body responsibility. Is there any trouble in the responsibility of a court? Some one judge writes an opinion, and makes himself responsible for it by putting his name to it, and the others either dissent or acquiesce in his judgment. Is there any want of responsibility in such a body? I apprehend not, because they are obliged to give their reasons for their action. So in a board like this. If it gives reasons then it will be responsible, if it gives no reasons, it may act arbitrarily and its members may endeavor to shift the responsibility from one to the other. I think there is a great check in that respect and I do not fear, therefore, when we make this board an advisory body still causing the Governor to exercise the actual pardoning power that there will be any difficulty on the subject of responsibility. I believe I have summed up fairly all the objections that have been made to this board by the various gentlemen who have spoken. It seems to me, sir, that they have not overthrown the great objections to vesting the pardoning power in the Governor, nor have they invalidated the reasons given by me why it should be vested in a board. I submit, therefore, that the Convention should entertain this proposition with favor. One word further. There may be defects of a formal kind in this substitute that has been proposed, which was prepared by the committee of the Prison Association, as I have stated. I have had no time to examine it except as to its general principles, as I did not expect debate upon it would occur this morning; but if there are such defects they can easily be remedied. All I want to have passed upon now is the general principle, and then the article can be amended in order to make it coincide with the views of the gentlemen who have raised any valid, formal objections to it.

The question was put upon the amendment of Mr. Greeley to the amendment offered by Mr. T. W. Dwight, and it was declared lost.

Mr. GOULD— I offer the following amendment:

Insert after the word "pardons," in sixth line, "But no such pardon shall be granted until the application for it has been submitted for examination to a board of pardons, to be provided by law, nor until a full report by such board has been submitted to the Governor."

Then I wish to offer another amendment, as follows:

Insert after the word "reprieves," in eleventh line, "Every pardon, except in cases of treason, granted by him, shall express the reasons for granting it upon its face."

I hope the committee will not lose sight of the true issue to be decided by it. It has been argued by many gentlemen who have spoken on the subject as though the object of this amendment was to deprive the Governor of the pardoning power. It is nothing whatever of the kind. The question is simply whether the Governor, in the exercise of the pardoning power, shall exercise it intelligently and after a due scrutiny. It is very important that the committee should remember this matter. It has been alleged by one gentleman that unless the application comes to

this board in a proper form it will fail. I cannot understand why any particular form of application should be addressed to the board more than the Governor. There is no necessity for addressing a petition or adopting any kind of form in relation to this board whatever. The board are not to exercise the pardoning power. This board are only appointed to take the evidence; they are to inquire without regard to the facts of the case, and no petition whatever is necessary to be addressed to them. I think the petition, or whatever form is adopted, will be addressed to the Governor first, as it has been in times past, and the Governor will refer it to them. The gentleman alleges that the board must have written rules, and he emphasises the word "written" as though the writing would do some very great injury. Gentlemen must be aware that the pardoning power is now exercised according to rules, and it would be exceedingly dangerous unless it was exercised according to rules. A man is convicted of crime by the intervention of a court, and after a full, fair and ample trial, the court decides that he is guilty of that crime, and is worthy of the punishment annexed by the law to the commission of it. There certainly should be no caprice in the exercise of the pardoning power when the law has once pronounced upon the subject—that is sufficient. It has been alleged that there must be counsel, but why should there be counsel in regard—

At this point the PRESIDENT *pro tem.* resumed the chair.

The PRESIDENT *pro tem.*—The hour of 12 o'clock having arrived, in accordance with the resolution on Thursday, the Convention will stand adjourned until Monday evening at seven o'clock

So the Convention adjourned.

MONDAY, August 26th, 1867.

The Convention met at 7 o'clock P. M., the President *pro tem.*, Mr. FOLGER, in the chair.

The Journal of Friday was read by the SECRETARY, and approved.

Mr. VERPLANCK—It will be recollected that a few days since, a memorial was presented to this Convention, from the Cattaraugus band of the Six Nations of Indians, residing in this State, asking that this Convention would not authorize a clause in the Constitution, having reference to the Indians. I received, to-day, a letter from my old friend, Ely S. Parker, who is a Colonel in the United States army, attached to the staff of Gen. Grant, and who is head chief of the Six Nations of Indians. I ask that it be read and referred to the Committee having charge of the relations of the Indians to the State.

The SECRETARY proceeded to read the communication, as follows:

HEAD-QUARTERS, ARMIES OF }
-THE UNITED STATES.

WASHINGTON, Aug. 23d. 1867. }

SIR: I take the liberty of addressing you this note for the purpose of calling your attention to the Indians of the State of New York. During the last few years, the people have made great

material progress in the arts and mysteries of enlightened civilization. It is well known, also, that no door is open to them, either in the State laws, or any act of Congress, whereby they, or any one of them, can become citizens of the State or of the United States. As you are now in Convention to revise the fundamental law of your State, I would urgently and respectfully request your aid in incorporating a section in the new Constitution, permitting Indians of your State to become citizens, the conditions, restrictions and obligations of such citizenship, to be definitely and specifically regulated by any Legislature, meeting subsequent to the adoption of the Constitution. Most excellent parties to consult on this subject, would be Attorney-Gen. Martindale, Hon. S. E. Church, and Hon. Geo. W. Clinton, all of whom are perfectly familiar with the condition and wants of the Indians of the State. Letters upon this subject, have been addressed, by me, to the gentlemen above named. The Indians, at present, are not favorable to this proposition, but so much time must elapse before the subject can again be legitimately brought up, that I deem it wise to ask the incorporation in the new Constitution of a section granting this privilege. Before the expiration of twenty years there will be many Indians who will be taking advantage of the privilege if granted.

I am, very respectfully,
 Your obt. serv't,
 ELY S. PARKER,
 Seneca Chief, and
 Col. U. S. A.

To Hon. I. A. VERPLANCK, Albany, N. Y.

The communication was referred to the Committee on the Relations of the State to the Indians residing therein.

Mr. DUGANNE presented the petition of citizens of New York, asking for restrictions against taking exorbitant interest in the shape of rents.

Which was referred to the Committee on Industrial Affairs.

Mr. FOWLER presented a petition on the same subject.

Which took a like reference.

Mr. BARTO presented the petition of Herman Camp and one hundred and twelve others, citizens of Trumansburgh, praying for the prohibition of licensing the sale of intoxicating drinks, except for medical purposes.

Which was referred to the Committee on Adulterated and Intoxicating Liquors.

Mr. HARRIS presented the petition of John H. Reynolds, Hamilton Harris and others in favor of abolishing the office of Regents of the University of the State of New York.

Which was referred to the Committee on Education.

Mr. GRAVES presented the petition of Richard Smith, and other citizens of New York, up on the subject of equalizing rents with the value of other property in the city of New York.

Which was referred to the Standing Committee on Industrial Affairs.

Mr. SMITH presented the petition of the Saratoga Baptist Association (representing about five thousand members) asking for a constitu-

tional provision inhibiting the donation of money, etc., for sectarian purposes.

Which was referred to the Committee of the Whole.

Mr. PRINDLE—I ask leave of absence for Mr. Eddy for four days. He has been called away on very important business.

There being no objection, leave was granted.

Mr. FERRY—I offer a resolution, which I would like for the present to lie on the table and be printed.

The SECRETARY proceeded to read the resolution, as follows:

WHEREAS, The sessions of this Convention are approaching their close, and no report has yet been made by the Committee on the Judiciary; and

WHEREAS, The delay affords just reason to suppose that the committee find it difficult to agree upon any common plan: Wherefore, hoping to relieve said committee from some of its embarrassments, and to aid in the dispatch of business so important, it is

Resolved, That said committee be instructed to report to this Convention a system embracing the following features:

1st. A court of appeals composed of—judges, all of whom shall reside during the entire term of their office, at such place where the court shall be held; such court to be always open.

2d. A supreme court holding two general terms for the entire State (with liberty to the Legislature to add one more if experience shall show it to be necessary) possessing an appellate jurisdiction only, to be composed of—judges each, all of whom shall reside during their entire term of office at the place where their respective courts shall be held; such courts to be always open. For the trial of causes civil and criminal, the transaction of special term business, together with the business now performed by county courts, courts of sessions and county judges, a judge shall be provided in each county who shall reside at the county seat where his court shall be held, and such court shall always be open. There shall also be a clerk in each court with no other duties to perform but such as shall appertain to said court.

3d. All the aforesaid judges shall hold their respective offices for the term of—years, or until they shall have attained the age of—years, which period should be long enough to occupy the best portion of an ordinary life capable of being devoted to such action and responsible labors, and the remuneration shall be sufficient to satisfy all reasonable claims or expectations, and said judges shall be rendered ineligible to the same office.

4th. Abolish the present court of appeals, supreme court, circuit courts, courts of oyer and terminer, county courts, and courts of sessions.

Which was laid on the table at the request of the mover.

Mr. ALVORD—It is evident there is not a quorum here. I move a call of the roll.

The PRESIDENT *pro tem.* announced the question on the motion of Mr. Alvord.

Mr. GREELEY—I understand it is the right

of a member to have the roll called without reference to a vote. When I moved, some days since, that the roll should be called on each day immediately after the reading of the Journal, it was objected to on the ground that the roll of the Convention could be called at any time upon the call of a member, and my motion was laid on the table.

The PRESIDENT *pro tem.*—The Chair supposes it is the only way to ascertain whether a quorum is present. The roll will be called.

The SECRETARY proceeded to call the roll, and the following members were found to be present:

Messrs. A. F. Allen, N. M. Allen, Alvord Andrews, Axtell, Ballard, Barto, Bickford Bowen, Carpenter, Clinton, Cochran, Conger. Cooke, Corbett, Curtis, Duganne, C. • Dwight, T. W. Dwight, Ferry, Folger, Fowler, Fuller, Gould, Graves, Greeley, Gross, Hand, Hardenburgh, Harris, Hitchcock, Houston, Kinney, Krum, Landon, Lapham, A. Lawrence, M. H. Lawrence, Lowrey, Ludington, Mattice, Merwin, More, Morris, Murphy, A. J. Parker, Pierrepont, Potter, Prindle, Prosser, Reynolds, Schoonmaker, Schumaker, Sheldon, Sherman, Smith, Spencer, Stratton, Strong, M. I. Townsend, S. Townsend, Van Campen, Van Cott, Verplauk, Wales—65.

Mr. ALVORD—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Alvord, and it was declared carried, on a division, by a vote of 34 to 18.

So the Convention adjourned.

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TUESDAY, August 27, 1867.

The Convention met at 10 o'clock A. M., the President *pro tem.*, Mr. FOLGER, in the chair.

Prayer was offered by Rev. E. P. WADHAMS.

The Journal of yesterday was read by the SECRETARY.

Mr. FERRY—At the time my resolution was submitted I made a motion that it lie on the table and be printed.

The PRESIDENT *pro tem.*—The Chair did not hear that part of the motion requesting that it be printed. The Chair only heard that part requesting that it be laid on the table.

Mr. FERRY—Will a motion be in order to have it printed?

The PRESIDENT *pro tem.*—It will under the head of resolutions.

There being no further objections the Journal was declared approved.

Mr. STRATTON presented the petition of seventy-eight members of the Washington Society of the city of New York, asking that the Legislature be prohibited from passing any law prohibiting the traffic in fermented wines and liquors, and that all laws regulating such traffic shall be general.

Which was referred to the Committee on Adulterated Liquors.

Mr. GROSS presented a petition on the same subject.

Which took the same reference.

Mr. DUGANNE presented the petition of D.

H. Judson and others, in favor of the prohibition of the donation of public moneys to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. REYNOLDS—I desire to ask leave of absence for Mr. Ely for the session of to-day.

No objection being made, leave was granted.

Mr. HALE—I gave notice on Friday of a motion to amend rules 28 and 29. I wish to renew that motion to-morrow, there are so few present.

Mr. FERRY—I now move that the resolution introduced by me last evening be printed.

Mr. VERPLANK—It occurred to me that the resolution introduced, to say the least of it—

Mr. ALVORD—I rise to a point of order, that when a question comes up for printing it must, under the rule, go to the Committee on Printing.

The PRESIDENT—The point of order is well taken. The resolution, under the rule, must go to the Committee on Printing.

Mr. BALLARD offered the following resolution:

Resolved, That the Committee on Revision are hereby instructed to so amend the article relating to the powers and duties of the Governor as to give ten days after the adjournment of the Legislature within which bills sent to the Governor may be signed, when that time has not elapsed, during the session.

Which was laid over under the rule.

Mr. GREELEY—I call up for consideration the resolution I offered on Friday last.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That the rules of this Convention be so amended as to abolish the Committee of the Whole, with all requirement that reports be considered therein.

Mr. GREELEY—I think it must be apparent to every member of this Convention that, without a decided change in our mode of proceeding, we are not likely to finish our labors here by the time at which the Convention has indicated, by a very strong vote, its purpose to close its deliberations. I know it has been to many members very inconvenient and irksome to remain here through all that season of the year when men of business and of intellectual pursuits expect to find some little relaxation from the pressing cares and duties of their lives. That time is gone, however; and still I believe that a large majority of this Convention desire to close its deliberations in such time as to afford them some little leisure to discharge other duties and fulfill other engagements. Now, the Committee of the Whole is simply a time-wasting machine. We go into Committee of the Whole, and talk, and talk, and we are generally obliged to go out of Committee of the Whole in order to be able to act on amendments. We cannot reach them in committee on account of one member rising to talk, and another, and another; and very often, after this Convention has made up its mind how to vote on a proposition—when no words can be said that will alter the mind of a single delegate—we have to endure the affliction of eight or ten speeches, for no purpose but for the pleasure of the speakers respectively. Well, now, if the

Committee of the Whole can be abolished, we shall take up our propositions, one after the other, in Convention, and, when we have heard enough of a question, we shall sustain the previous question thereon, whether it be a distinct proposition, or a section, or a whole article. We may have a rule governing the time of a given debate, and thus be enabled to go on with our work at least twice as fast as now. We have still three very important subjects before us. First, Finance and Canals; second, Judiciary; third, Powers and Duties of the Legislature. We ought to give to each of these reports very nearly a week, which will take us beyond the time we have fixed for adjournment. If we go into the debate set down for this morning on Canals and Finances in Committee of the Whole, probably next Saturday will find us still in that Committee of the Whole. If, on the other hand, we take it up in Convention, we may, after two days' debate, move the previous question on section after section, and finish up the article this week. Without further words, therefore, I trust this Convention will sustain the labor-saving, time-saving proposition, that the Committee of the Whole be abolished, so that we shall consider each proposition as it comes before us directly in Convention.

Mr. ALVORD—I hope not. There is no sort of difficulty in this Convention controlling the Committee of the Whole, as well as any other portion of its business. If, after a suitable time has been given in Committee of the Whole, the majority of the committee desire to escape any further investigation or discussion in the matter, they can move that the committee rise, report progress and ask leave to sit again; and, when we come into Convention, move to discharge the committee from further consideration, and put it into the body of the Convention. I trust, sir, it shall not be settled even by the majority of this Convention, political or otherwise, that we desire to shut off discussion in regard to any matter important enough to deserve discussion, and leave the matter where it is, and when the matter comes up for discussion, if it is not important enough to detain this Convention any longer, then take the usual parliamentary mode of getting rid of it without the necessity of inflicting upon any and everybody the previous question. I trust, therefore, the motion of the gentleman from Westchester [Mr. Greeley] will not prevail; and, for the purpose of testing the views of the Convention, I move for the present it lie upon the table.

The question was put on the motion of Mr. Alvord, and it was declared carried.

Mr. GROSS—I desire to call up the resolution offered by me on last Friday.

The SECRETARY proceeded to read the resolution as follows:

Resolved, That the Committee on Revision be directed to strike from the article on organization of the Legislature, the words "except aliens," wherever they occur.

Mr. GROSS—I have only a few remarks to make upon my resolution. I have offered this resolution in the expectation that it but requires to draw the attention of this body more closely to the subject embraced therein, in order to see these two words "except aliens" expunged from the

article on the organization of the Legislature. I have in vain looked in any of the thirty-seven State Constitutions for a similar clause; in upward of thirty of these Constitutions the representative apportionment is based on an enumeration of the *inhabitants* of the respective States, and in but a few, on the number of qualified electors. None contains a so-called alien clause, which, so far as the framing of the article in our prospective revised Constitution is concerned, is also a departure from the Constitutions of 1777, 1821 and 1846 of this State. While I am at a loss to discover any good reason for the insertion of this clause, it will not be difficult to show its objectionable working. An alien is not a stranger or foreigner, not a person who has not acquired any rights or privileges so far under our form of government; but an alien is every individual who is not a citizen or voter in your State. If a man born in the city of New York and engaged in business for many years at the same place, chooses to have his residence temporarily on the New Jersey side of the Hudson river, he becomes an alien to your State, under the clause which has been adopted by this body. Tens of thousands of other persons, having made a certain county or city their permanent home, and there declared their intention to become citizens, nevertheless remain aliens up to the moment of their taking out the second paper. They have to share in all the duties and obligations of full citizens; they have to bear arms in the defense of their adopted State or country; they have an equal standing with the citizen in our courts of law, and yet are not counted as representative people, but treated as aliens. Is not this a most invidious, impolitic and unnecessary distinction? Should not this enlightened and progressive Empire State be the very last to adopt such an illiberal policy—a policy having no parallel in any of the Constitutions of the States of the Union? This Convention may rest assured that the people have more feeling on this alien clause than will be safe to trifle with. I hope that the object of my resolution will prevail.

Mr. ALVORD—I will call the attention of the gentleman from New York [Mr. Gross] to the present Constitution, article 3, section 5:

"The members of Assembly shall be apportioned among the several counties of this State by the Legislature, as nearly as may be, according to the number of their respective inhabitants, excluding aliens and persons of color not taxed, and shall be chosen by single districts."

That is the Constitution of 1846. I will also call his attention to the Constitution of 1777, which says

"That the Legislature at their next session shall apportion the said one hundred members of the Assembly among the several counties of this State, as nearly as may be, according to the number of electors which shall be found to be in each county by the census directed to be taken in the present year."

I will also refer him to the Constitution of 1821, which says:

"The members of the Assembly shall be chosen by counties, and shall be apportioned among the several counties of the State, as nearly as may be, according to the number of their respective inhabitants, excluding aliens, etc."

So it seems to me this idea has been impressed upon the Constitution of this State from the beginning of the State up to the present time, and we are merely re-enacting, so far as regards that provision, the Constitution since it was first a State in this Union. I trust, therefore, so far as that is concerned, it is a perfect answer to the proposition of the gentlemen that we are undertaking to inaugurate a new system and a new provision.

Mr. CONGER—In turn, sir, I would like to call the attention of the gentleman from Onondaga [Mr. Alvord] to the fact that the Constitution of the United States recognizes no such basis of representation as that which is contained in the old Constitution of 1846. Having heretofore advocated a more liberal basis, and attempted to get a vote in this Convention in favor of extending the policy of the general government, and make it the policy of the State of New York, I am very free to say that I do not think the time has yet arrived when the Convention will retrace its steps or recall its vote. I therefore think it prudent, and I hope the gentleman from New York [Mr. Gross] will excuse me if I seem to trench upon his rights in deferring this resolution at this time. I think it prudent and wise that the Convention should throw over for the present the reconsideration of this question, and therefore to that end I move to lay this matter on the table.

The question was put on the motion of Mr. Conger, and it was declared carried.

Mr. BERGEN—I ask leave of absence for Mr. Veeder for one week.

There being no objection, leave was granted.

Mr. CHURCH—I desire to ask unanimous consent to present a brief statement by Mr. Clarke, a member of the Committee on Finances, correcting a statement in the report which he made to this Convention. It is very brief, and he desired me to present it.

There being no objection, the SECRETARY proceeded to read the statement, as follows:

ROCHESTER, August 26, 1867.

HON. W. A. WHEELER, *President of Constitutional Convention,*

SIR: I have just noticed a mistake in the report submitted by me on the 8th inst., caused by a clerical error. I shall not probably, on account of illness, be able to be in Albany before Thursday or Friday next, and as the financial reports are made the special orders for to-morrow, I take this method to make the correction, at the earliest moment.

The table on page fifteen of the report, showing the numbers of tons moved on the Erie canal in each year from 1852 to 1866, both inclusive, and the table on the same page of the report, showing the number of tons delivered at tide-water from the Erie and Champlain canals, from 1860 to 1866, both inclusive, are correct; but the estimate deduced therefrom of the average yearly increase, was erroneous. It would have required from forty to fifty boats, depending upon the quantity of through or way freight, running each season, to have earned the average increase for the period mentioned, instead of the boats as stated in the report.

Whether it would have required one, forty or fifty boats, does not, of course, essentially affect

the argument, but as the estimate was erroneous, I request that you will present this communication to the Convention, and that it be placed upon its records.

Respectfully yours,

FREEMAN CLARKE.

Mr. CHURCH—I request that that be printed as a part of the report which Mr. Clarke made.

There being no objection it was so ordered.

Mr. BOWEN—I desire to ask leave of absence for Mr. Flagler until Thursday morning.

There being no objection, leave was granted.

The Convention again resolved itself into Committee of the Whole on the report of the Committee on the Pardoning Power, Mr. TAPPEN, of Westchester, in the chair.

The CHAIRMAN announced the pending question to be on the amendment of Mr. Gould to the substitute of Mr. T. W. Dwight.

Mr. GOULD—I wish simply to disabuse the minds of several gentlemen who spoke the other day on this subject with regard to the effect of the amendment which I offered. Most of those gentlemen seem to suppose that I propose to take away the power from the Governor of deciding upon the question of pardons. The amendment proposed by me does not have this effect in the slightest degree. It only provides that a full and careful examination shall be made of all the facts and circumstances bearing upon an application for pardon, before the Governor shall finally decide upon it. It seeks merely to provide, by proper proofs, for a proper decision of all the applications which may be made for pardon. The applications will be made hereafter, if this amendment should be adopted, precisely as they have been made in times past. A petition will be presented to the Governor; the Governor will refer it to this board, who will take the necessary testimony in the case, and so inquire into all the facts and circumstances, and make a written report to the Governor with regard to it; the Governor will then decide upon it precisely as he decided before, with this difference, that while before he had decided upon *ex parte* testimony, mostly unwritten and unarranged, in this way he will decide upon testimony which is carefully taken under classified heads and thoroughly elaborated. Now, it was alleged the other day that no complaints have been made heretofore with regard to the exercise of the pardoning power. I think those gentlemen have not been careful readers of the newspapers, and have not been familiar with the commentaries that have been made throughout the State with regard to the exercise of this power. Why, sir, as early as the days of Governor Seward the democratic papers were filled with objections against him on the ground of his exercising the pardoning power from partisan motives. The same thing has been said with regard to Governor Wright; and those who remember the period of his administration will well recollect how much objection was made to his course, particularly in the case of Honora Shephard, which made a great noise at the time and elicited a great deal of adverse commentary. So it has been with almost all the Governors; Governor Seymour was charged with a partisan

use of the pardoning power, and every one knows that Governor Fenton has been greatly blamed with regard to the exercise of that power. Now, sir, I had occasion to examine a great many of those cases, and I believe that no Governor has really and willfully exercised that power in a partisan manner; but when I have investigated a case I have almost invariably found that they had acted under an entire misapprehension of the facts of the case; when I have examined the papers before them, when I have seen the grounds on which they decided, I think, in almost every instance, I would have decided in the same way that they did, and yet those gentlemen have admitted, every one of them, that they have frequently made very great mistakes in the exercise of the pardoning power, for the reasons I have stated, that they have imperfectly apprehended the facts. I recollect, while Governor Seymour was here the other day, he stated to us of the committee, that in many instances he had acted upon applications for pardon in the afternoon, when he was tired and exhausted, and when his head was weary with a discussion and consideration of multifarious propositions of State policy, which he would have refused the next morning, and when on reviewing the case he has regretted that he granted the pardon. The same thing has been stated by other Governors. There can be no doubt, I think, that the Governors of this State do require relief in this matter; they do require the agency of a council, who shall take the great burden of this investigation off of them, and look over the matter with the care which is due to the importance of the subject. It is a serious matter to give the power to grant pardons hastily, and very serious consequences result from it. Gentlemen must remember, while they themselves do not see them or come in contact with them, there is a large body of thieves dispersed throughout the State, whom they know very little about; they do not know them when they meet them in the streets; but these thieves are acting in concert, they know and recognize all the movements of legislation which may affect their interests; and it is an undoubted fact, that the facility for obtaining pardons, is one of the elements which go to the increase of thieving and knavery in this State—certainly, punishment is one of the most important means of repressing crime, and we should be careful how we relinquish the security afforded by it. Gentlemen have alleged as one of the objections to the appointment of this board, that it will lead to the employment of counsel, in order to procure pardons. Surely those gentlemen cannot be aware that counsel are constantly employed in procuring pardons from the Governor. There are a set of a men all over the State, known as tombs lawyers, whose business it is, and who make it their business to procure pardons, and get their living by the trade, and who understand precisely the subtle means by which pardons can be procured. They circulate petitions all around, and they are very careful to get on them men of standing and reputation in both political parties; and when these are brought before the Governor, and no adverse testimony is produced, it is very influential with him, so that it not unfrequently happens the

very worst rogues are pardoned in consequence. There is very little conscience or principle in the men who thus get honest men to sign applications for pardon, and even good men often violate their conscience by signing them. I must confess that I am as bad as any one in this matter. Only a few days ago there was a poor Irish woman, she was herself a cripple, came to me with a story that her brother was confined in the State prison, and she brought three or four miserable, half-starved children, who looked up with pleading eyes and begged of me to draw up a petition for the release of that brother and father. I knew this man was a dangerous man, he had been sent to the State prison for killing his wife in a fit of passion, but when those mute, pleading eyes were looking upon me and the miserable emaciated forms of those half-starved children were before me, I was utterly unable to refuse, and I did draw up a petition and signed it myself. I say it is very necessary that the real meaning of gentlemen who sign petitions should be scrutinized by some gentlemen who are trained to that kind of investigation. It has been said that all this might have been just as well effected by allowing the Governor to call to his aid, from time to time, the assistance of such gentlemen as he might desire. But I think this is too serious a matter to be trusted to such an investigation as this. I think there should be a board who should act under the sanction of an oath of office, and whose business it is to learn all the ways and schemes by which pardons are procured, and which are resorted to in order to procure them. They should understand the nature of evidence; they should be able to apply the principles of scrutiny which are applicable to the examination of evidence, and who should be able to apply them very carefully and closely to all the evidence brought before them. Now, it is said that if we have a board of this kind it will lead to the application of rules. Why should we not have rules? Is it supposed that the Governor acts with caprice? Is it not to be supposed that they have rules which regulate them in this matter? Is it possible to scrutinize evidence without the application of rules? There are rules of evidence which have come down to us for ages, and whose accuracy and applicability has been sanctioned by the uniform experience of mankind. Why should we not make use of these rules which have proved so beneficial? Why should we reject them? It seems to me this is one of the reasons we should have a board, because they will use these rules for the discrimination of evidence, since by experience they have proved so valuable. Now, the gentleman from Oneida [Mr. Kernan] inquired, in the course of the discussion the other day, whether a board of this kind would not be more liable to be acted upon by sympathy than the Governor would. I cannot conceive how it is possible that a board of three men, acting upon a question of evidence, would be more impressed by sympathy with the prisoner than the Governor. It is one of the most important matters, as those gentlemen who are well skilled in the procuring of pardons know, how to operate directly upon the sympathies of the Governor. I remember Governor Young

told me he was informed by Governor Marcy that he never *could* withhold a pardon when the wife or sister of a prisoner came to him with tears and appealed for his clemency. He said he surrendered at discretion at once, and granted a pardon. I remember a case that came under my own eyes, where Governor Young had positively refused a pardon. It was a case in which I thought a pardon was as well worthy of bestowal as any that ever came into the Executive chamber. But the reasons that were conclusive to my mind were not conclusive to him. He refused to grant the pardon. The daughter of the man who was in prison came to me and requested me to aid her in procuring a pardon. I told her the Governor had positively refused, and the only grounds which she could present to the Governor he had already rejected. She insisted upon having an interview with the Governor himself. She had that interview, and before it was finished the Governor had granted a pardon. Sir, there is no such thing as altogether excluding sympathy from these considerations. I do not fear that this will operate more effectually on a board of commissioners than it will on the Governor himself. I trust, therefore, that the Convention will see that in the multiplicity of business which is constantly increasing, and which surrounds the Governor on every hand, that we have arrived at a time in the history of our State when it is absolutely necessary that the Governor should have some such assistance as is provided in the amendment. I cannot conceive any better way than that which the amendment itself proposes. One word in relation to the other part of the amendment, which provides that the instrument of pardon shall state upon its face the grounds upon which the pardon was granted. It has been alleged that the Governor can pardon for reasons which ought not to be made public. I have tried to search for the reasons which have been alluded to by the gentleman, but I cannot conceive a single case unless, perhaps, it may be where the Governor pardons on the ground that the person pardoned will be used as a witness in some criminal case. In such cases all that would be necessary for him to state would be that he pardoned the individual for the furtherance of public justice. That would be the reason to give. But if the Governor pardons a prisoner simply because he has behaved well in prison, or if he has detected some conspiracy in the prison and revealed it to the prison officers it is quite as well to state it on the face of the pardon, and it would be creditable rather than injurious to the person pardoned. I cannot conceive of a single case except the one I have mentioned where it would not be desirable to spread it upon the face of the pardon. On the other hand, the publication or the spreading on the face of the pardon of the reasons for its being granted, would be a very important means of preventing the Governor from using his power lightly or corruptly, and would prove a most valuable, practical safeguard against the abuse of the pardoning power.

Mr. VERPLANCK—It may be interesting to know how the Governor proceeds when an application for pardon is made to him. The Governor has a secretary called a pardon clerk, and when

an application comes for a pardon, the Governor first addresses a letter, through this pardon clerk, to the agent and warden of the prison in which the applicant is confined. He asks to be furnished with an abstract of the record of conviction, a statement of the conduct of the prisoner while in confinement, the condition of his health, and also whether he has been before in the prison in which he is confined, and if so for what crime and when discharged. Through the clerk the Governor then addresses a letter to the prosecuting attorney who tried the case, requesting him to furnish a precise statement of the case, as it appeared on the trial, together with any other facts and circumstances which may have a bearing on the question of granting or refusing a pardon, and to state the previous character of the convict. A letter is also sent to the judge who presided at the trial, in which the judge is requested to furnish the Governor with his opinion of the case, together with any facts and circumstances which may have a bearing on the question of granting or refusing a pardon. In addition to this, by law, the Governor has the right to consult as to any legal proposition with the Attorney-General, or any of the judges of the higher courts. It may be observed, therefore, by the committee, that when all these letters have been answered, when the Governor has got all the information he can obtain from the agents and wardens of the prison, from the district attorney who prosecuted the convict, from the judge who presided at the trial, and has consulted with the Attorney-General, and the judges of the higher courts, with reference to legal questions that may arise, he is very well prepared to pass upon the question whether or not a pardon should be granted, quite as well, I apprehend, as a board established either by the amendment of the gentleman from Columbia [Mr. Gould] or by the amendment of the gentleman from Oneida [Mr. T. W. Dwight]. As for myself, I am very willing to leave the pardoning power where it is now—to the individual responsibility of the Executive. I think it is safer there than in a board, where individual responsibility is lost. This pardoning power will be more safely and better exercised when you can go to the Governor and say, "You pardoned this man;" or, "You refused to pardon that man," than when you put the same question to a board, where the responsibility is divided and lost. It is said that this pardoning power is very onerous upon the Executive. It has been exercised in this State for a great many years, and while there has been some little complaint with reference to the amount of duties devolved upon the Executive on account of it, still the duty has always been performed, and, in the main, well performed. The Governor of the State formerly had more duties to discharge than he has at present. He had the appointment of most of the officers throughout the State, and many other duties now transferred to other departments of the government. He has much more time now than he formerly had to attend to the question of pardons. But these applications for pardon will be much diminished in the future. By looking at the report on prisons and reformatories, of which the gentleman from Oneida [Mr. T. W. Dwight] is the author, it will be found that

the average of pardons has decreased where the punishment is comparatively light. The gross average of pardons on all convicts sent to American prisons is from fifteen to twenty per cent; the average for convicts sent for five years and less than ten is from twenty to twenty-five per cent. The average on convicts sent to prison for ten years was twenty-five or thirty per cent, while with convicts sent for life it reaches the enormous proportion of forty or fifty per cent. It will be observed, therefore, the average is much less where the punishment is limited to a few years. Now, by the law of 1865, much more discretion was conferred upon the judges presiding at trials than formerly, in reference to punishment. By the law of 1865 a man who would formerly have been punished from two to five years, may now be punished for a term of not less than one, nor more than five years. A convict who might have been punished with imprisonment for not less than five, nor more than ten years, may now be punished for a term of not less than two nor more than ten years. All criminal offenses (except murder in the second degree, arson or manslaughter in the first degree) punished before the act of 1865 by imprisonment in the State prison for a term of not less than ten years, and, therefore, might have been imprisonment for life, are now punished by imprisonment for a term not less than five, nor more than twenty years. The terms of imprisonment will probably, under the spirit of this law, be very much shortened, and the average of pardons correspondingly reduced, and the work of the Governor, and the time devoted to this subject, will, I trust, be very much diminished. Again, Mr. Chairman, I am opposed to this board because it creates a new set of officers, and consequently additional expense to the State. At present, if created, such a board may not be very expensive, yet it will grow, as all these boards grow after they are safely established. It will have its secretary, its office, and in a few years it will be one of the most expensive departments of the State government. It is said that this power has been improperly exercised. That is the fate of all attempts at the exercise of power everywhere, in all ages of the world. The wonder to me is that greater mistakes have not been made by the Executives. I do not believe that this has been a subject of general or common complaint among the people—this exercise of the pardoning power. I know that general complaints were made of the exercise of the pardoning power in Pennsylvania. But the complaints grew out of the fact that the Executive had the power to pardon before trial. I do not believe that in this State anything will be gained by taking away the personal responsibility of the Governor and dividing and lessening it in a board to be appointed in either of the modes indicated by the gentlemen who have offered the amendments under consideration.

Mr. GRAVES—I have been interested in the discussion of this question, originating in the desire. I think, to change one system of long standing and familiar duties for another, with additional numbers, but not increased liabilities. This duty has become familiar from necessity to all the Governors who have filled the chair. This duty

of pardoning, in most instances, is to be performed under claims of mercy and equity, prompted by a sense of charity for the weakness and folly of human nature, and a desire to forgive where the reflection and remembrance of crime produces repentance and a desire to do better. The manner of attaining the end is simple, though arduous—plain, though requiring much patience and careful examination. It is now a direct appeal to a one-man power, to the judgment of one man, and has not required a union of minds to accomplish the work and to meet the public expectation or to benefit the object for which the judgment had been exercised. Seldom can an instance occur where the decision of the Governor can be founded upon anything but such evidence as would satisfy the mind of any fair man. He acts not by caprice; he is compelled by usage, if not by law, to obtain the evidence upon which the conviction was had, with all the attending circumstances; whether convicted by trial or confession; to ascertain the conduct of the convict since imprisoned; the life he led before; the opportunities which will be afforded him for doing better and the chances which he may have of making himself useful and others happy if he is again restored to society. The gentleman from Oneida [Mr. T. W. Dwight] assigns some reasons why he thinks there should be a change:

1. That the Governor is too easily reached, or too accessible, thereby making these applications more frequent than they would be if the pardoning power was further removed or more difficult to reach. The gentleman, I trust, will remember that this tribunal is an institution to meet the claims of mercy as well as retributive justice, and it would be hollow-hearted hypocrisy to remove the means of relief so far from the sufferer that he would die in the attempt to reach it; the nearer the good Samaritan is the better for the afflicted.

2. He says that while this power is easily approached it always keeps the prisoner excited, in hopes of pardon or release. Does not the gentleman know that while this hope exists in the mind of the prisoner he always puts himself upon his good behavior, and does so to obtain the aid or favorable certificates of the prison chaplain, and when that hope is lost he settles down contented in the wickedness of his nature, with nothing to encourage him in well-doing? He says the Governor may grant or withhold pardon from political motives. I ask would his power or desire be any less when associated with others, than when alone responsible for his acts, and when he could not charge the fault upon others and screen himself? All these are considerations for the Executive, with the possibility of a wrong conviction from false or interested testimony. Also the health and condition of the prisoner, and the good end that is to be obtained in connection with the prisoner's welfare, and that of his relatives and friends, who may be compelled to suffer to an extent far exceeding the benefits which the convict or the public may receive by continuance of the imprisonment. No one of these circumstances, perhaps, alone would require the Executive to exercise his clemency, and yet, combined, would form a strong case, and really demand the forgive-

ness of the State. I am not aware that this power has been injudiciously or mistakenly applied; that frauds may have been committed by the convicts, through their friends, and the prisoners discharged when the good order of society would have been promoted by perpetuating their confinement I have no doubt. But that is not the fault of the system, or the want of capacity of the tribunal. And although there may be a mistaken application of clemency, it is an error on the side of mercy, and, therefore, less to be regretted. With such a variety of crimes, and a medley of human wickedness to reach and punish by the criminal laws, it is beyond human capacity always to guard against the cunning devices of the accused, or the more-to-be-condemned conduct of those professing love of law, order and morality who lend themselves to screen the victim from just punishment. He says that the tribunal should state the reasons why the pardon is granted or denied. Could not the Governor do this as well as to have others associated with him? But I think there may well be reasons operating upon the mind and judgment of the Governor which the public might not desire to know, or might not be proper they should know if they did desire it. And while my friend has presented his new theory with plausible adroitness, he has failed to satisfy me that the change is demanded, or that the ends of justice would be better attained than now. The gentleman from Westchester [Mr. Greeley], is also an advocate for change. But has he given any facts which furnish evidence that the change contemplated is really a reform? He says when this new pardoning court is formed they can investigate the applications more thoroughly, and detect better whether some of those applicants are not old offenders. The case of the applicant, of course, is to be decided upon the merits and true condition of the offender at the time. If he has been an old sinner, and really repented, his case is one peculiarly within the domain of the State clemency; but I fail to see why the Governor could not make this discovery as well as other or a larger body of men. The facts are within his reach, and it is doing him but little credit to say that he will not avail himself of all the evidence within his power. From the great number of criminals with their relatives, who share to some extent the burdens of their punishment, it is not surprising that these applications are constantly multiplying and accumulating in the executive department. But I think we have reason to rejoice that the Roman firmness of our Governors has guarded well the bolts and bars of our prisons, and kept within their iron fastenings so many who have, by their conduct, forfeited their claims to protection from society. When we examine the number imprisoned, the hundreds of applications for pardons, with the accompanying testimonials from the good and virtuous men and citizens, I think we have reason to be proud of the faithful manner in which their duty has been performed, and can look forward with confidence that this power will not be abused by the succeeding Executives; but that they, like their predecessors, will assume the responsibility fearlessly,

which has been so long and so well done, that the public mind has not been called to any errors growing out of it. I hope the report of the committee will be adopted.

MR. M. I. TOWNSEND—My absence during the discussion of this subject will excuse me if in the few remarks I propose to make I shall repeat what has doubtless been better said by others. I rise simply for the purpose of presenting a simple view of the question as connected with the proposition by way of amendment to the report of the committee. Now, it appears that the applications for pardon amount to three hundred and fifty-three per year, a little more than one for every week day of the year if not one for every week day and Sunday. If there is to be established a court of pardons it will be found that the business before the court will be about double what comes before the present court of appeals, the calandar of which is now swelled to pretty near two thousand. In the business of this court will be included the getting up of testimony and the examination and discussion of considerations that may be presented, and it will become the most lumbering and the most heavy tribunal in the State. It will be utterly impossible, I think, to transact the business of such a court in the way proposed by the amendment. This adding a court to act with the Executive may work very well in a smaller State, where the whole population is not much larger perhaps than the criminal population of our own State. But it must be remembered we have a population now of more than four millions of people, a population constantly increasing, and that the amount of business is out of all proportion to the business of those little States where the Governor has a council that acts with him on the subject of pardons. Rules that might work very well in those States will be found to be utterly inadequate to the business of the great State of New York. This was the only suggestion I desired to make, but now that I am upon my feet I wish to call the attention of the gentleman from Oneida [Mr. T. W. Dwight] to another remark of Governor Seymour. He addressed not only the Committee on Pardons, but the Committee on State Prisons at the same time. We put to him the direct question, as he had the honor on two different occasions to preside over the destinies of the State of New York: "In your opinion, Governor Seymour, have there been too few or too many pardons granted?" He says: "Gentlemen, I have never had any trouble, although I have undoubtedly made many mistakes. I have never had any serious trouble with the pardons I have granted. It is the pardons I have refused that have caused the trouble. I do not believe," he says, "that there has been any trouble during my connection with the public affairs of the State of New York where the Executive of this State has granted more pardons than ought to have been granted." I will make one other suggestion in regard to this court, that is this: There are a great many cases where pardons are granted where the very object of granting the pardon will be lost by the delay incident to the action of a board. And as other gentlemen have done, I will refer to an instance within my own knowledge. A man by the name

of Dunlop; who was in main a very good citizen, but under the influence of liquor he had a difficulty with his wife, and was sentenced to the penitentiary, I think, for a period of six months. He had a family of seven small children dependent on his labor for support. Within six weeks of the time of his commitment to the penitentiary a fire occurred, his wife lost her life in the fire. Here were seven small children homeless and without the care of a parent. The magistrate who committed Dunlop, immediately, on the next morning after the fire, joined in a recommendation for pardon, stating the circumstances in which the family was placed; the citizens of the town joined in that recommendation, and in five hours' time Dunlop was at home, taking care of his children. See what would have been the state of things if the petition for pardon had been obliged to await six months' examination and discussion before a pardoning board—before being sent to the Governor. This is not a solitary case. Very many such cases must necessarily arise. Whoever possesses this pardoning power should be immediately accessible—accessible to the poor, accessible to the needy, accessible to the humble, and so accessible that there need be no form of presentation by the person whose case is to be considered.

Mr. McDONALD—I do not rise to argue this question, but to state a fact which, when I state it, every gentleman in this Convention will remember a like occurrence if he has had much acquaintance with public affairs. The argument, as far as I have heard it, is not that a board will not do well, but that the Governor has done well. If a man wants a pardon, he does not employ a poor man to solicit it, but he sends an influential man of the same political party as the Governor. It is often a partisan contrivance, and everybody knows that there are many pardons that are political pardons, and have less to do with punishment than anything else. Gentlemen have called attention to Governor Seymour. I will state with regard to one of Governor Seymour's pardons. In the year 1863, in the town in which I lived, there was an occurrence which was an admitted riot. One party was tried and convicted; the other thereupon plead guilty of riot, which consisted in stopping a funeral procession, pointing a pistol at the driver of the hearse, and taking the body away to another burying-ground, and burying it there, where it now lies. These are the admitted facts of the case in writing in the Executive department, with no contradiction whatever, except that it is said by the petitioners, six in number (all of whom belong to the same political party with the prisoners), that the prisoners all agree that they did not point a pistol; that they did not have it with them; but that they stopped the hearse and took away the coffin; they threatened injury and exercised force they admit. What did Governor Seymour do? In the first place, he wrote to the judge, asking him to suspend the sentence. The reply came, saying the sentence had already been carried into effect. It was only fifty dollars fine and three months' imprisonment in Monroe county penitentiary, and was pronounced by two justices, the county judge agreeing to abide their judg-

ment, one of those judges, Robert Chapin, being a well-known adherent of the political party to which the culprits belonged, yet within a month thereafter four or five of these persons were pardoned out, and there was no reason urged for it in the papers except that they had large families who needed their support, and that in the judgment of petitioners it would be best. All these things show that pardons are granted politically. There is no doubt about it. A gentleman from Ulster county has told me, and I have heard it stated several times, that on account of a mistake in pardoning a man who had committed a most outrageous murder, life was not safe there at all. I have heard that repeated a number of times. That happened from misrepresentation—the Governor made a mistake. All I argue is that under this state of affairs the Governor is a political officer, and will be likely to pay more attention to the representatives of his political supporters than his political opponents, whereas he should take the statement of all respectable citizens and not be biased in favor of one more than another. As far as I am concerned, I am not in favor of a court. I propose to join with the Governor some one who will be capable of relieving him of a portion or the great part of the duties appertaining to the exercise of the pardoning power. I propose to join with him the Attorney-General and some other person who may be appointed by the court of appeals. What hurt would come from such a board as that? The Governor has counsel now. What harm will come if this counsel acts officially and without being liable to be approached by republicans or democrats through political considerations? Again, it has been well asked, "How can the Governor examine one pardon per day and attend to the remainder of his duties? Can it be well done thus?" In the case I have mentioned it was alleged the punishment was too large. The Governor afterward wrote to the judge saying he thought that was the best way to settle a family difficulty. But although there was a great deal of feeling created in the community where this outrage happened, I do not believe there was a man unprejudiced in that county who did not think that sentence was too light. I, therefore, am opposed to loading the Governor with this extra duty, and hope this Convention, although they may not create the court proposed by the gentleman from Columbia [Mr. Gould], will authorize a board, of which the Attorney-General shall be one and the Governor another. It does seem to me that thus justice will get its due, mercy will be properly heard and political pardons will not be as frequent.

Mr. T. W. DWIGHT—I discussed this subject at considerable length on Friday, when there were but few members in attendance, and I desire only at this time to add to what I said upon that occasion some support from authority. The question was brought before the committee at a time when it was not anticipated, and I was not prepared to strengthen the reasons that I gave by the authority of others. I desire this morning to add some influence in that respect. Now, sir, what were the points that I made on that occasion? They were in substance these: that the objections to the present system are that

there is too great accessibility on the part of the Executive; that as it is easy to approach him, there is a continual stimulus to the solicitation of pardons; that the effect of the present system is to impede reformatory influences that are brought to bear upon the convict; that it tends to diminish the certainty of the punishment, which, according to all philosophers, from Beccaria down to the present time, is one of the most important elements in the due administration of justice; and further, that many pardons are refused on political grounds as well as granted for the same reasons, and that it is impossible for us, under the present system, to bring any checks to bear in the case of refusal. We might hold the Governor responsible for improper pardons, but we have no means of holding him responsible for refusing to grant pardons where they ought to be bestowed, and for that and other reasons we ought to endeavor to do something to establish another system which is in a measure free from the objections which have been successfully urged against the present. Now, sir, I propose to strengthen what I then said by quotations from prominent writers upon this subject. I allude, in the first place, to the well-known writer De Tocqueville, who looked with the eye of a philosopher upon our institutions, and who could readily understand their working as they presented themselves to his observation. What does he say in respect to this point to which allusion has been made, the accessibility of the American Executive?

"In the United States the Governor of each State alone has generally the dangerous privilege of pardoning * * * In spite of the extent of his prerogative in special matters (that of an unrestrained right of pardon, for example,) the Governor of a State occupies a social position by no means elevated. Every one may approach him at any time; may press upon him anywhere and any moment. Thus given up, without any intermediate person, to urgent solicitation, can he always refuse? He feels himself the slave of public caprice; he depends upon the chances of a reelection; and he is obliged to treat his partisans with extreme care. Would he dissatisfy his political friends by refusing a slight favor? Moreover, being invested with but little power, he loves to make as much use of it as possible."

That is the opinion of this great and thoughtful writer on the working of the American system of pardons as it is now in operation. Now, sir, the almost unanimous testimony of the wardens of the State prisons is to the same effect. They say that the subject of pardon occupies the thoughts of the convicts by day and fills their dreams at night, and that to the attainment of it their best energies are given as well as a great part of the money they earn by overwork, or otherwise command, for the race of pardon brokers is not yet extinct, men who have been noticed by philosophers from an early period to have been in existence. In fact there are great numbers of them with us. Now, one of the most prominent wardens at the present time is the warden of the State prison of Wisconsin, who is an educated man, and has paid great attention to this subject. He says:

"A board of pardon, to aid the Executive by examining applications for his clemency, would be advisable, and I should prefer the judges of the highest court of each State to act as such board. A law working the forfeiture of a pardon for a new offense, and remanding the offender to serve out his original sentence, would be not only expedient but also just."

Now, then, in respect to the point upon which much has been said, the undesirableness of giving reasons for pardons. That is the law of the State of Ohio, and Chief Justice Chase, who has given much attention to this class of subjects, is of the opinion that that is a wise law. I read from a letter which he recently sent to the Prison Association of this State, having been asked whether it was not desirable that the pardoning power should give reasons for its acts, and he replied: "In Ohio the law requires the Governor at each session of the Legislature to report the pardons granted by him, and the reasons of his action. This requirement seems to me to be wise."

Mr. VERPLANCK—I would like to ask the gentleman a question—whether Chief Justice Chase does not also say that he sees no reason why a board should not be appointed?

Mr. T. W. DWIGHT—He says, "perhaps it would be well, also, to require the approval or consent of a board or council." That is his remark on the 366th page of the "Report on the Prisons and the Reformatories of the United States and Canada."

Mr. VERPLANCK—And he adds, "That the want of such a board is not attended with ill consequences, so far as I am acquainted."

Mr. T. W. DWIGHT—Yes, sir. The substance of his remark is that he does not express any opinion either way on the subject. This subject was very carefully treated by the late Governor Washington Hunt, of this State, and, with the consent of the committee, I will read a passage from his letter, which was written not long before his death. He says:

"Our present system, which clothes the Executive with an unlimited power of pardon, is liable to many and grave objections. The strongest argument that can be urged in its favor is that it renders a single functionary directly responsible for the honest and enlightened exercise of the power. It must be conceded that this consideration is entitled to some force. But when you reflect upon the nature of this prerogative, the arduous labors and painful responsibilities inseparable from it, I believe it might be more wisely delegated to a board or council, composed of persons thoroughly qualified by study and experience, and enabled to devote their minds to the subject, free from the weight of other official avocations. There are other functions of his office, which demand from the Executive his constant care, and his highest energies. It is not enough that the Governor may possess all the desired qualifications for the judicious use of the power of pardon, such as thorough knowledge of criminal jurisprudence and practice, combined with clearness of judgment and firmness of will. In a large and populous State like our own, the applications are so numerous, and the labor of investigating them so arduous

and perplexing that no mind, however rapid or comprehensive, can do full justice to the subject without neglecting, in some degree, those legitimate Executive duties which concern the whole people and perhaps involve the most vital public interests. This is more especially the case during the session of the Legislature. I consider it desirable in every point of view that the Governor should be relieved from daily appeals and importunities for the exercise of clemency. Our system was derived from the mother country, where the power of pardon is an attribute of the crown. The framers of our Constitution were naturally influenced by precedent and analogy, and at that early period perhaps it was reasonable to assume that the Chief Magistrate, chosen by the people, would prove to be the safest depository of this delicate power. In a monarchy there is much to be said in favor of vesting in the ruling prince the prerogative of mercy. But this theory is inapplicable in a republic, where the Executive is elected by the people for a limited term of office."

It cannot be said, as was said on this floor on Friday, that the Executives of the State were all in favor of preserving the pardoning power in its present form. Here we have a very full and extended letter, of which I have read only a very small part, from this gentleman, whose ability to pass upon the question cannot be denied, affirming for good reasons that the power of pardon should be vested in some other way than as it is constituted at present. I will only make one further remark, and that is that there is a misapprehension in regard to the intention of this amendment. It is not designed that this board should take the place of the Governor, but that they should simply act as an advisory council removing many of the difficulties which attend the investigation of these cases, and, having carefully examined them, not as a court but only as a quasi-judicial body, they should present to the Executive the reasons which guided them in their action.

Mr. VERPLANCK—The gentleman from Oneida [Mr. T. W. Dwight] has not read all that was written by the gentleman whom he quoted on the subject. Chief Justice Chase, in the same letter to which the gentleman refers, says:

"The power in all systems of government must be somewhere; and I am not prepared to say that its exercise would be more wise or more beneficial in other hands than those of the State and national Executives."

Then Governor King, of New York, who was addressed on this subject, says:

"It is a power which must be lodged somewhere, and can, in my judgment, be best administered by a single person."

Governor Throop says, in answer to the inquiry of these gentlemen:

"To the questions whether the pardoning power is judiciously vested in the Executive, or whether it would not be more discreetly exercised by an organized board of pardon, I must say that I do not see where that power can be so safely lodged as with the Executive."

Governor Packer, of Pennsylvania, says:

"I am satisfied that nothing would be gained

by taking away the pardoning power from the Chief Magistrate of the State and his cabinet and conferring it on a council or board of pardon or on any other tribunal."

Now, the learned gentleman [Mr. T. W. Dwight] has talked about the effect of this pardoning power on the convict himself, about this hope of pardon, and its effect upon the prisoner. I do not propose to discuss these questions but simply desire to say that this hope of pardon will not be diminished when brought before a board of pardons which will meet at stated sessions, and the very fact that there is such a board, and that it meets at stated times, will in my opinion, invite applications for pardon. Now, a word in reference to the gentleman from Ontario [Mr. McDONALD], who has been pleased to claim on this floor that the pardoning power has been exercised for political reasons, and to single out Governor Seymour, of this State, as a person who has been guilty of this exercise of the power, and he cites a case which occurred in his own village of Geneva. Now, it is possible the learned gentleman may be mistaken in regard to his facts. Certainly before I condemn Governor Seymour in that case, I would want a witness who would manifest upon the trial less zeal and less feeling than the gentleman from Ontario manifested while he was relating this incident to the Convention.

Mr. McDONALD—In regard to the fact I will say I was present at the trial, and before saying anything this morning I read from the record in the pardon bureau, and I have simply stated the facts as they appear on the record. The evidence is there, and the gentleman can go and see it. It is the case of William and Patrick Murphy, and the pardon was granted May 8th, 1863.

Mr. VERPLANCK—I desire to say there is some explanation of this matter which the gentleman has not given. He has chosen to say it was done for political purposes. I venture to say when the whole matter is found out, that there were other than political reasons governing the action of Governor Seymour. I do not stand here to justify Governor Seymour in this matter. The records of the State justify him, and I propose to put his justification upon those records, and I will read from the record the exercise of the pardoning power for the last ten years in this State. Under the government of Myron H. Clark, during the years of 1855 and 1856, there were 530 pardons granted. Under Governor King, during the years 1857 and 1858, there were 426 pardons granted. Under the government of Edwin D. Morgan for four years, from 1859 to 1862, there were 337 pardons granted. Under Governor Seymour, for the years 1863 and 1864, there were 187 pardons granted. Under the government of Reuben E. Fenton, during the years 1865 and 1866, there were 299 pardons granted. That is, the number of pardons granted by Governor Seymour during the years 1863 and 1864, were, say, one-third less than any other Governor during the last ten years, and I leave the justification of Governor Seymour on this record of the facts.

Mr. POND—The gentleman from Oneida [Mr. T. W. Dwight], who has referred the committee to a letter from Governor Hunt, contained in a report made by a committee on prisons and reformatories,

correctly stated that he had not read all that was to be found in that report bearing upon this subject. Like other advocates, he had the sagacity to select out one in his favor, and leave out the number of letters from other ex-Governors who have had the duty to exercise this power conferred upon them, and also almost unanimously gave as their opinion that this power is one which should be lodged with the Executive, and that no causes for complaint have arisen from the fact that it has been so lodged, other than the evils which are incident to every human institution. And that in regard to the pardoning power, it has been exercised properly and conscientiously, by those who have had that duty to perform, and among others several letters have been well referred to by the gentleman from Erie [Mr. Verplanck]. Chief Justice Chase is emphatic and very categorical in his replies to the questions that were propounded to him by this committee, and it is perhaps but just that a little more should be read from this report than has been read by the gentleman from Erie [Mr. Verplanck]. On page 366 of this report, Chief Justice Chase says:

"I can only answer for Ohio. I do not think the power has been abused in that State. Mistakes in its exercise have doubtless been made, but mistakes are inseparable from human administration. I know of no case in Ohio in which the merits of the case have had less weight than the influence of applicants or their friends. Errors are usually on the best side—that of mercy."

Thank God for that! I want a functionary to exercise this power to pardon who can always be able to make that response to any such inquiry. On page 370, Chief Justice Chase says, in answer to the question propounded to him, "Is it your conviction that the power of pardoning, as it now exists, leads more frequently to a defeat of the ends of justice than to the furtherance of a wise and even-handed administration of the same?" "It is not."

Ex-Governor King, who has also been alluded to by the gentleman from Erie [Mr. Verplanck], and whose experience is not to be exchanged for the speculations of any, says in regard to this power:

"It is not a desirable but it is a necessary and proper moral attribute of the Executive; and as that attribute is conferred by the Constitution of the State, it is not repugnant to our theory of government. The power of pardon, as it now exists in this State, belonged to the colonial Governors, and has since been wisely continued in the hands of the Executive of the State. It is a power which must be lodged somewhere, and can, in my judgment, be best administered by a single person."

On page 371, Governor King says:

"The power of pardoning, as it now exists in this State, has, upon the whole, served the ends of justice."

That is not as long a letter as Governor Hunt's, but it is shorter and a good deal sweeter. It suits my taste better. On page 375, Governor King responds:

"I think the ends of justice are best promoted by giving the power of pardoning to the Executive alone, as one of its essential attributes. The

responsibility is then perfect. An organized council or board of pardon divides the responsibility among several, which should, in my judgment, belong to one. I therefore regard the power of pardoning as an inherent, absolute and essential attribute of the Executive, which should be continued in the same form in which it now exists in nearly all the States."

On page 377, Governor King further responds: "I know of no mode by which the power of pardon can be properly limited or regulated."

Now Governor Johnston, of Pennsylvania, in regard to this subject says:

"Believing that a council or board of pardon, whether acting with or without the Executive, would not lessen the evils arising from an abuse of the pardoning power, I could not recommend its creation by legislative authority."

Governor Parker, of Pennsylvania, coincides with that view also. He says:

"Believing, therefore, that the power of pardoning should exist somewhere in every State; and believing also that there is no safer nor better depository for that power than the Chief Magistrate for the commonwealth, I would not disturb the present system as it exists in Pennsylvania. The founders of our institutions and the framers of our Constitution were, in my judgment, quite as wise, as moral and as patriotic as those governmental innovators of the present day, who seek to disturb settled opinions and establish systems and customs by experiments of more than doubtful propriety."

Governor Throop also responds to the same question, and I might say, in regard to his letter as the gentleman said in reference to Governor Hunt's, it is a long letter and discusses this question with distinguished ability, and gives us the result of his experience for three years, during which he was Governor, and also gives the number of pardons which he granted.

"To the questions whether the pardoning power is judiciously vested in the Executive, or whether it would not be more discreetly exercised by an 'organized board of pardon,' I must say that I do not see where that power can be so safely lodged as with the Executive. The search for a perfect depository of the power is vain, and will be fruitless. All experience gives us a mortifying view of humanity. An Executive, perfect in his intellectual or moral nature is not to be found, however superior he may be to other men; nor are the people, although swayed by honest purposes, always right in their choice of persons to fill public offices. But where can power be more wisely lodged than with a person chosen to exercise the highest functions of government by a constituency too broad for corruption to cover? He may be unworthy, but chosen from the most conspicuous class of citizens, with a well-known character, it is not too much charity to suppose that moral unfitness for his high trust will be an exception. And should such an one ever receive from the people that proof of confidence, the public have a security in his interest and his pride; for, conscious of his responsibility to a jealous and scrutinizing public, he would be prompted to a just and unexception-

able discharge of his duties. On the other hand, a board of divided responsibility is much more accessible to corruption; every member is an avenue through which the wily advocate may approach his object."

He says further, on page 382:

"Then, again, what power should create this board of pardon? If the Governor, is it not better that he should do the thing himself and be accountable for it, than to do it by indirection and throw the responsibility upon a board? If the Legislature, we have too many and painful proofs of the little reliance to be placed upon the action of that body when political or private or personal interests are in question before them."

It seems the experience and observation of Governor Throop, even at that early day, was not entirely different from the experience of the present day, if we may correctly judge from what he said of the Legislature. Now he further says:

"The tribunal of mercy should be accessible, and the meanest meet no obstruction in his approach to it; yet it may be wise to incur the exercise of its powers with many prudential rules. While I express the opinion that there should reside, somewhere, an unlimited power of pardoning to mitigate the severity and modify the unequal operation of laws (necessarily general, regarding classes and not individual cases), and also to consider matters which would not come under consideration at the trial, perhaps occurring subsequently, I think it the duty of the Legislature to surround the exercise of that power by every practicable precaution."

Now, sir, so much for the testimony of the ex-Governors to whom application was made in reference to this subject. I must say that, looking over this report, the overwhelming evidence contained in it is, if we regard the experience of those who have the best opportunity to know, that no change could be made in this respect beneficial to the people of the State or to those interested in the exercise of this power. Now, in regard to the case referred to by the gentleman from Ontario [Mr. McDonald], he was pleased to make the statement in regard to the case of pardon by Governor Seymour, referred to by him upon the strength of consulting the records in the Executive office, and what was found there. But, Mr. Chairman, there is no evidence to show that Governor Seymour did not consult many gentlemen of experience, many gentlemen in whom confidence might properly be reposed in regard to the pardon there granted, and I will take occasion to say I have not the slightest doubt that the pardoning power in that case was exercised conscientiously, and that it will be found upon inquiry that he based his action upon sufficient authority, and that it was properly exercised. Now, suppose, Mr. Chairman, that those gentlemen who propose a new measure here in regard to this power, who propose to associate with the Governor a board, to aid him in the discharge of his duties, and thereby restore a principle in our Constitution which has already been exploded, in regard to the council of revision, which is abolished. I say to these gentlemen who propose to restore that feature in our Constitution, what is the best course,

and the course dictated by wisdom, if we are to adopt any such measure? Is it to incorporate it in our Constitution, in our fundamental law, and put there an experiment which may not work well? It is said that the experiment works well in New Jersey. New Jersey, by the last census, had between six and seven hundred thousand inhabitants, scarcely more than half the number of the city of New York. New Hampshire, where they have a council to aid the Governor in his duties, has between three and four hundred thousand inhabitants only. I say the conclusion to be drawn from the action of these other smaller States can have no application here, but if it had, the question I propose is, should it upon experiment be incorporated in our fundamental law, or should it, as this article proposes, be left with the Legislature to provide for regulating this method of applying for a pardon? The section proposed by the committee and reported by them, is the same which is now in our Constitution, and the first clause of it is in these words:

SEC. —. The Governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons.

Now, under this section, it is perfectly competent for the Legislature to pass a law making it essential that application shall come through a board of pardon, if that is necessary, or if it be advisable, and providing that upon the recommendation only of this board, that it be submitted to the Governor with just such a report from them as they may deem it proper to make. Now, if any change is desirable in this respect, which I insist there is not, it seems to me the part of wisdom would be to leave it as it is now left, with the Legislature, so that in case they adopt a principle or measure which may not operate well in practice, after it has been tried, it may be amended, modified or abrogated, but not placed in the Constitution of the State, so that for twenty years we may encounter its evils, greater than those which exist under the present system.

The question was then put on the amendment of Mr. Gould, and it was declared lost.

The question then recurred on the amendment offered by Mr. T. W. Dwight, and it was declared lost.

MR. T. W. DWIGHT—I wish, sir, to offer another amendment, to be added to the section

The SECRETARY proceeded to read the amendment, as follows:

"The Legislature shall have power to constitute a board of pardons to aid the Governor in the performance of the duties required by this article, with powers to be described by law."

The question was put on Mr. T. W. Dwight's amendment, and it was declared lost.

MR. KETCHAM—I offer the following amendment:

Strike out all of line six after the word "law" to the word "upon," so it will read "subject to such regulations as may be provided by law."

The question was put on the amendment of Mr. Ketcham, and it was declared lost.

Mr. COOKE—I move that the committee now rise, report the article to the Convention as complete, and recommend its adoption.

The CHAIRMAN—The Chair is of opinion that it is not now in order, as the Secretary has not finished the reading of the article.

Mr. DUGANNE—I move to strike out in line three the words, "treason and," and in lines six and seven, the words, "conviction for treason," and insert, "in cases of impeachment." My object in moving this, sir, is to strike from the Constitution all allusion to, or recognition of, the sovereignty of the State, as may be implied by the word "treason" against the State. I am one of those who do not believe that treason can be committed against the State, and that the only rights of sovereignty over treason are vested in the Republic. In most of the cases of constitutional provision regarding a pardoning power, in other States, we find that the word "impeachment" is used instead of the word "treason," and it seems to cover all cases; and I think it would be well for us to follow this example. The word impeachment will cover any case that may arise, such as misprision of treason, petty treason, or any minor offense, and thus the word "impeachment" can be used instead of the word "treason." I therefore make this motion.

The question was put on the amendment of Mr. Duganne, and it was declared lost.

Mr. KETCHAM—I offer the following amendment:

Add after the word "granted" in line 13, the words, "and the reasons therefor." So it will read, "shall annually communicate to the Legislature each reprieve, commutation and pardon granted, and the reasons therefor."

The question was put on the amendment of Mr. Ketcham, and it was declared lost.

Mr. DUGANNE—I propose another amendment:

Add after the section as follows:

"In all cases where the death penalty shall have been commuted to imprisonment for life, by a Governor, no successor of that Governor shall have power to pardon the convict except upon legal proof that he was unjustly convicted."

I submit this amendment in answer to the argument that we have heard in this Convention, in referring to the feverish impatience in which convicts are usually found from the hopes of a pardon, which being refused by one Governor, may be granted by another. I admit, sir, that if this amendment should be passed, it would have a tendency to induce the Governor, in all cases where capital punishment was to be inflicted, by the judgments of the courts, to commute to imprisonment for life; and therefore it is, that I consider it an anti-capital punishment clause. But, sir, there would be this effect, that when such commutation of the death penalty was made by one Governor, no other Governor, in future years, would have power to pardon the convict; and, therefore, his sentence to imprisonment for life would be a fixed fact, never alterable; and no inducement could be held out that it should be. I think that by adopting an amendment like this,

we should leave in the hands of the Executive, power to determine in what cases commutation of the death penalty would be advisable, and then, when the commutation was once made, the judgment to imprisonment for life would be irrevocable, and would be so understood by the criminal population, and, as I believe, would be a very great menace against the commission of capital crimes.

The question was put on the amendment of Mr. Duganne, and it was declared lost.

Mr. GOULD—I move to add after the word "commutation," in the second line, the word "rehabilitation." I do so to provide for a class of cases that are not met by any of our existing laws. There is a class of cases that have been met with in the experience of every Governor where men have been found to be absolutely innocent where they have been convicted by mistake; and after suffering imprisonment for a year or two that mistake has been discovered. It is a misnomer to say that a man is pardoned after the discovery of a mistake of that kind: there is no pardon about it. He has committed no crime, and therefore he cannot, in the nature of the case, be pardoned. If, therefore, this word "rehabilitation" is introduced at that place, it will meet such cases, and the Governor will be permitted to save the man's credit on record, to show to his family that his conviction was a mistake, and that he did not deserve the infamy which is incident to the condemnation.

Mr. VERPLANCK—I shall be obliged to favor that amendment. I do not know the reasons that were controlling upon the committee on all the subjects that they have discussed, but on this subject it is the fact that in many countries of Europe, and I believe in some of the States, this word that is now proposed to be inserted is used; and I have no objection myself to having it in our Constitution. I think the Governor has power now to restore the party to his civil rights. But it does seem to me that a person convicted by mistake, and who never was guilty of the offense, should have something to show to his children and to his friends—not a pardon simply, but something showing not only that the Governor had restored him to his civil rights, but that he was innocent of the offense charged to him. It can do no harm, and it is a matter of justice to a wronged individual, and I hope the committee will in this respect remit the rule laid down not to alter the section, so as to admit this word.

Mr. POND—It seems to me that it is unnecessary to put such a clause in the Constitution. If a party has been wrongly convicted and is pardoned, the pardoned prisoner will be content with a statement of the fact, and if recompense or compensation is necessary in addition to that, it seems to me that the Legislature should be applied to for that compensation, and that properly it should not be put into the Constitution.

Mr. DUGANNE—I am very much in favor of this amendment. In many countries of Europe, as has been remarked, restoration of citizenship is made by proclamation, so that the same publicity, or more if possible, than was given to the conviction shall be given to the exculpation of

the accused from crime. I do not like the word rehabilitation. I would like a much plainer word to express restoration to citizenship; but I do hope that some word shall be placed in the Constitution whereby one who may be unjustly convicted of crime can be restored to citizenship.

Mr. PRINDLE—It strikes me that the phraseology should be changed somewhat. It seems to me that it would be an anomalous state of things to have the Governor grant a rehabilitation for offenses. This proposition reads "to grant rehabilitation for offenses." It seems to me that the phraseology is not very good.

The question was put on the amendment of Mr. Gould, and it was declared lost, on a division, by a vote of 29 to 46.

Mr. COOKE—I now desire to renew the motion that the committee rise, report the article as complete, and recommend its adoption.

Mr. C. C. DWIGHT—I move to amend by striking out the recommendation for its adoption.

The CHAIRMAN decided the amendment to be out of order.

Mr. McDONALD—Is it in order to offer an amendment at this time?

The CHAIRMAN—Amendments are still in order.

Mr. McDONALD—I offer the following amendment—

Mr. COOKE—I rise to a point of order, that the motion to rise and report has the precedence.

The CHAIRMAN—The Chair entertained that motion and considers the point of order well taken, and will put the question on it.

The question was put on the motion of Mr. Cooke, and it was declared carried.

Whereupon the committee rose and the PRESIDENT resumed the Chair in Convention.

Mr. TAPPEN, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Pardon Power, had gone through therewith, and had made no amendments thereto, and had instructed their Chairman to report the same back to the Convention and recommend its passage.

Mr. KETCHAM—I desire now to renew the proposition I made before the committee, and I will state a few reasons for making it, which I think were hardly apprehended when it was made. It was to amend by inserting after the word "granted," in the thirteenth line, the words "and the reasons therefor." It seems to me that that covers just the ground proposed by the gentleman from Columbia [Mr. Gould], by the amendment he offered, and subsequently favored by the gentleman from Erie [Mr. Verplanck], a member of the committee. It puts it upon record if a man is improperly convicted and pardoned for that reason. It will make a record of it that will last forever. It seems to me, also, that it will effect another object—that it would tend to prevent what some members of the Convention have complained of, the exercise of the pardoning power for political purposes. The Governor is thus required at each meeting of the Legislature to place before them the number of cases wherein he has granted pardons; and the reasons upon which they have been granted. I move, there-

fore, that the section be amended by inserting in line thirteen, after the word "granted" the words "and the reasons therefor."

The PRESIDENT announced the question to be upon the amendment of Mr. Ketcham.

Mr. GOULD—I hope the amendment of the gentleman from Wayne [Mr. Ketcham] will be adopted. I think that its effect will be exceedingly salutary. Gentlemen seem to labor under the misapprehension that there have been no difficulties arising out of this matter. I will state one single incident, for the truth of which I will vouch. Governor Young made a promise to the anti-renters of my county that if they would vote for him he would pardon those who were in prison. I know that to be a fact. They did vote for him; and after his election he did open the prison doors and let them out. I think if this amendment is adopted that no Governor who is compelled to put his reasons on record would ever make a promise of that kind.

Mr. M. I. TOWNSEND—I am opposed to this amendment for the reason, that it will be increasing the labors of the Governor to a degree that seems to me entirely unnecessary. If pardons amount to one hundred and fifty a year the Governor will be compelled to write one hundred and fifty opinions. It will put a labor upon him about equal, if not superior, to that now required of a judge of the court of appeals. And this book has got to be made up and sent to the Legislature every year. It seems to me very cumbersome, and it also seems to me that the benefit to result from it will not be equal to the evil that will be created. For myself, I do not believe that the gentleman is right in his information that Governor Young promised a pardon to any person as a condition of his election.

Mr. GOULD—I know it personally.

Mr. M. I. TOWNSEND—My friend was not in the anti-rent ranks at that time, and I cannot believe that if such an interview was held between Governor Young and the friends of Big Thunder he suffered so important and reliable a witness as my friend from Columbia [Mr. Gould] to be present on that occasion; and, therefore, I cannot believe that my friend is quite right in the use of language when he says that he personally knows it. It is very easy to make charges of official misconduct. I cannot believe that we have had Governors who would act from any such motives. And, suppose it were true that the Governor was wicked enough to violate his oath and to promise that he would give pardons, if elected, and then, when elected, grant pardons simply for political reasons. Does the gentleman from Columbia [Mr. Gould] suppose that would be the reason put upon record? Certainly other reasons could be assigned. If there is a corrupt motive, a corrupt reason would not be given. There is enough conflict of circumstances about every conviction for crime to furnish a reason which the Executive can put upon paper and furnish to the legislative body, and we should get no nearer to the actual motives of the Executive. It seems to me that this would be putting a burden upon the Governor which is entirely unnecessary.

Mr. ALVORD—I do not rise to discuss this

question, but I rise to express my regrets at the declaration made by the gentleman from Columbia [Mr. Gould]. We are to a certain extent writing history. He stands up in his place here and states, as an absolute fact, conduct upon the part of one of the Governors of this State—a man who has gone to his last home—which would have subjected him, if it had been brought before the people of this State, as the Constitution permitted, and proved upon him, to impeachment and removal from his position as Governor of the State of New York. It is true that, at the time in question, when Governor Young was elected Governor of the State of New York, I was opposed to him politically, and exerted all the power and influence, in conjunction with my party, that could possibly be used, for the purpose of defeating his election. I am aware that stories have been told with regard to his connection with the anti-renters, but they have passed away as merely the stories of an excited political campaign. I have that opinion from my recollection of the past—of the highmindedness, and of the honor, and of the integrity of Governor Young of this State; that I do not believe that it would have been possible to have substantiated an accusation of that kind against him, standing in the position that he did at that time, as a candidate for the office of Governor. I trust, sir, that the gentleman will not permit it to go upon the records of this Convention, in these debates, that he believes, from what he has learned of the past, that that could have been the truth; that he will not come out here, openly and boldly, in the face of no judicial determination of this question, and say here that a Governor of this State has, in the past, for the purpose of securing his election, violated, in every regard and in every respect, the position that he occupied as a man, a citizen, or as a Governor.

Mr. LANDON—The proposition of the gentleman from Wayne [Mr. Ketcham] requiring the Governor to assign his reasons for granting pardons, it seems to me strikes at the very fundamental theory of this pardoning power. It is not so much based upon justice as upon mercy. Justice can assign her reasons, but mercy cannot always assign them. Justice proceeds by equal law and equal rule, but mercy proceeds from sympathy, from kindness, from charity, from those better impulses of the human heart. If a reason is to be always demanded, and a reason is to be always assigned, then the impulses of the heart are restrained by the logic of the head. A tribunal that is constantly assigning reasons soon creates an iron rule of precedent, and will cease to be the dispenser of mercy, but will become the creature of fixed and inflexible action. Thus we destroy the very idea of pardons. If a reason can be assigned which conforms strictly to a sense of justice, then the pardon is not a pardon; it is a misnomer to call it a pardon. It is a just judgment. I claim we want this pardoning power to exist in the State in order that at some time it may be said to a prisoner, "Thy sins are forgiven thee: go and sin no more." If reasons are always to be assigned it cannot be so.

Mr. FOLGER—I move the previous question.

The question was put, ordering the main question, and it was declared carried.

The question then recurred upon the amendment of Mr. Ketcham.

Mr. KETCHAM—I call for the ayes and noes. A sufficient number seconding the call, the ayes and noes were ordered.

The SECRETARY proceeded to call the roll, and the amendment of Mr. Ketcham was declared lost by the following vote:

Ayes—Messrs. Barto, Beckwith, Bell, Bickford, E. P. Brooks, J. Brooks, Carpenter, Clinton, Curtis, T. W. Dwight, Gould, Greeley, Hand, Ketcham, Kinney, A. Lawrence, Livingston, Mattice, McDonald, Murphy, Opdyke, Schumaker, Seaver, Seymour, Smith, Stratton, S. Townsend, Williams—28.

Noes—Messrs. A. F. Allen, Alvord, Andrews, Armstrong, Axtell, Ballard, Barker, Barnard, Beadle, Beals, Bergen, Bowen, E. Brooks, Cheritree, Church, Cochran, Conger, Cooke, Corbett, Daly, Duganue, C. C. Dwight, Endress, Everts, Farnum, Field, Folger, Francis, Fuller, Garvin, Graves, Gross, Hadley, Hale, Hammond, Harris, Hatch, Hiscock, Hitchcock, Hitchman, Houston, Hutchins, Krum, Landon, Lapham, M. H. Lawrence, Lowrey, Ludington, More, Morris, Nelson, Paige, Pierrepont, Pond, Potter, President, Prindle, Prosser, Reynolds, Roy, Rumsey, Russell, Schoonmaker, Sherman, Spencer, Strong, Tappen, Tucker, Van Campen, Van Cott, Verplanck, Wales, Weed, Wickham, Young—78.

Mr. C. C. DWIGHT—I move to insert, after the word "impeachment" in line three, the words, "and rehabilitation in cases of erroneous conviction."

Mr. CONGER—I would like to inquire from the gentleman from Cayuga [Mr. C. C. Dwight] if he would accept an amendment to insert the word "complete," so that it will read "complete rehabilitation."

Mr. C. C. DWIGHT—I will, with pleasure.

Mr. FOLGER—I wish to know what the gentleman means by "complete rehabilitation," any more than by "rehabilitation."

Mr. CONGER—It would seem to be proper, if practicable, to make some marked distinction in the use of terms, so as to provide for the difference between cases where men have been erroneously or justly convicted. Where a man has been, for a felonious offense, sent to the State prison, the effect of a pardon, as is well known, is to grant to him the enjoyment anew not only of his liberty, but also of his civil rights; so that his pardon operates as a restoration to those rights. In the other case, where he has been unjustly convicted, and the Governor releases him, it is now proposed to use a term which has been taken from the continental legists, the word "rehabilitation," which, in plain English, means a reclothing of the man with his civil rights. Now, as far as the force of language goes, what is the appreciable difference between saying that you restore a man to his civil rights and reclothe him with his civil rights? If you adopt the phrase proposed you need to have some qualification of the term, so as to make the distinction sought plain, so as, in the absence of an idiomatic phrase, to make it as near an

Anglo-Saxon expression as you can make it. "Complete rehabilitation" might serve as a distinction to indicate what was granted in one case as of right, and in contrast with the restoration through the favor of a pardon. That is the reason I asked the gentleman from Cayuga [Mr. C. C. Dwight] if he could approve this amendment.

Mr. S. TOWNSEND—I ask if "perfect pardon" would not be better.

Mr. FOLGER—The words "*complete* rehabilitation" may, as the gentleman from Rockland says, mean "reclotthing." I do not know whether that has anything to with the fact that the prisoner gets a new suit of clothes when he is released. If the word "*complete*" means anything, it ought to add more force to the signification of the other word, *rehabilitation*. If it is not to convey additional meaning, then it is of no use. When a person has been unjustly convicted and sent to the State prison and confined there three or four months or more, does it mean by the act of the Governor releasing him, rehabilitating him, that he shall be restored to his civil rights not only, but compensated in money for the time he has unwillingly served the State? If it does, then we are giving the Governor the right, in effect, to fix an appropriation upon the State treasury. And this is why I inquired whether it was intended to convey any additional meaning by the word *complete*. That single word *rehabilitation*, in itself, is sufficient to express the desired idea that the prisoner was unjustly convicted. If you wish to convey no more than that idea, why multiply words—why add the word *complete*, which would seem to increase or intensify the meaning of the other word? But if you mean to give the Governor some further power than to restore simple rights, the power to give a right to demand recompense from the State, you allow the Governor to trench upon the powers of the legislative branch of the government—powers not properly belonging to him.

Mr. C. C. DWIGHT—If my amendment is still within my control, I prefer to withdraw my consent to accepting the amendment of the gentleman from Rockland [Mr. Conger]. I accepted it without consideration. I desire further that the amendment shall provide for inserting in line twelve, after the word "pardon," the word "rehabilitation."

Mr. EVARTS—I object to what I must regard as a blemish in this Constitution, in the use of a foreign word and the introduction of these foreign ideas. If there be any practical necessity for this measure of complete exercise of the justice or mercy, which ever we may consider the principle attribute of the pardoning power—any occasion which our community called for—there would have been some word familiar to our language, to our law, and to our customs, and to the intelligence of the people which would have expressed it. "Pardon," Mr. President, is a word large enough to cover everything, and "pardon" does cover it. It is competent for the Legislature to make such provision for such special cases of redress of injustice that have happened; and there we should leave it, as it seems to me.

Mr. M. I. TOWNSEND—I rise to oppose this

proposition, for the reason, that it seems to me it proposes to introduce an entirely new idea into our jurisprudence—to constitute the Executive chamber a court of appeals in a criminal case—and that the Executive is to pass upon the justice and propriety of convictions. After the courts have tried a case and have passed upon the guilt or innocence of the accused, it is proposed now that the case be tried in the Executive chamber; and that the Governor is to decide, *ex parte*, that the judges and the jury have done wrong in convicting the accused. It is a novel idea in our jurisprudence. It has generally been deemed sufficient that the Governor, when the case is brought to his mind, should say that the party should go free; whether it be because there is supposed to be some defect in the trial or for some matter arising after the trial. The gentleman from New York [Mr. Duganne] will excuse me if I misunderstand the proposition.

Mr. DUGANNE—I wish to ask whether, when a man has been convicted of murder and afterward the man who was supposed to have been murdered appears, a pardon can cover that offense which was never committed, whether there should not be some declaration of his innocence?

Mr. M. I. TOWNSEND—The reappearance of the person alleged to have been murdered, would be an adequate declaration. It need not be put in the Constitution of the State that in that case a man should not be deemed guilty of the crime of murder. It does seem to me a great deal better to use that single word "pardon," that old French word—perhaps originally Latin. The use of the word "pardon" does not bring the Executive in conflict with the courts. I think the men now in prison would be entirely satisfied to be set at large if they could be pardoned in the old fashion, without the use of this new and very elegant word, "rehabilitation."

The question was put on the amendment of Mr. C. C. Dwight, and it was declared lost by the following vote:

Ayes—Messrs. A. F. Allen, Beckwith, Bell, Bickford, E. Brooks, Clinton, Corbett, Curtis, Daly, Duganne, C. C. Dwight, T. W. Dwight, Farnum, Gould, Greeley, Hammond, Hand, Kanney, Lapham, A. Lawrence, Mattice, More, Schumaker, Seymour, Sherman, Smith, Stratton, S. Townsend Verplanck, Wales, Williams—31.

Noes—Messrs. Alvord, Andrews, Armstrong, Ballard, Barker, Barnard, Barto, Beadle, Beals, Bergen, Bowen, E. P. Brooks, J. Brooks, Carpenter, Cheritree, Church, Cochran, Cooke, Endress, Evarts, Field, Folger, Francis, Fuller, Garvin, Graves, Gross, Hadley, Hale, Hardenburgh, Harris, Hiscock, Hitchcock, Hitchman, Houston, Ketcham, Krum, Landon, M. H. Lawrence, Livingston, Lowrey, Ludington, McDonald, Morris, Murphy, Nelson, Opdyke, Paige, Pierrepont, Pond, Potter, President, Prindle, Prosser, Reynolds, Roy, Rumsey, L. W. Russell, Schoonmaker, Seaver, Sheldon, Spencer, Strong, Tappen, M. I. Townsend, Tucker, Van Cott, Wickham—69.

Mr. BICKFORD—I offer an amendment.

The SECRETARY proceeded to read the amendment, as follows:

"The punishment of crime shall not be miti-

zated, remitted, or varied by legislative enactment after conviction."

Mr. BICKFORD—The object of this amendment is to prevent in future any such legislation as took place in the case of Mary Hartung, a case which I suppose is notorious and understood by every gentleman present. That wicked woman—

Mr. POND—I rise to a point of order, that the amendment proposed is to restrict the power of the Legislature, and it is out of place.

Mr. BICKFORD—It amounts to this, that a pardon shall not be granted by any other person than the Governor.

The PRESIDENT—The Chair rules it is not germane.

Mr. LANDON—I move the previous question. The question was put on the motion of Mr. Landon, and it was declared carried.

The question was then put on adopting the section, and it was declared carried, and referred to the select Committee on Revision.

Mr. ALVORD—I move that the same Committee of the Whole, who have charge of the report of the Committee on Finances, also have charge of the report of the Committee on Canals.

The PRESIDENT—The Secretary informs the Chair that provision has already been made by a special order.

Mr. CHURCH—I do not see any necessity for the motion of the gentleman from Onondaga [Mr. Alvord], and it seems to me there is a manifest impropriety in taking that course. The report of the Committee on Canals contains a provision for the management of canals which is entirely independent of anything connected with the report of the Finance Committee, and it seems to me that that is a subject which ought to be considered separately.

Mr. ALVORD—In order to obviate that difficulty, I am willing, if necessary, to so far modify my proposition as to include only the financial portions of the report of the Committee on Canals.

Mr. CHURCH—I do not see anything gained by that, as one report or the other must be taken as a basis of action in the Committee of the Whole. And one or the other must be moved as an amendment. Now it is perfectly easy, if the report of the Committee on Finance is taken up in Committee of the Whole first, it is perfectly easy to move the financial section of the report of the Committee on Canals as an amendment, but I do not see any propriety. I do not see how you can take two independent reports up at the same time; one must be moved as an amendment to the other. It can be done as well without referring that to the same committee, as it can in that way. I think it might lead to confusion, and I therefore hope we shall go into Committee of the Whole on the report of the Committee on Finance.

Mr. ALVORD—I do not wish at this late stage of this Convention to again raise the question, which was raised and settled, as I understand, by this Convention in its beginning, after a long and labored argument upon all sides of this Convention. Upon the incoming of the report of the committee dividing up the subjects which were to be taken by different and separate committees of this Convention, the keeping, care and man-

agement of the canals was assigned alone to the Committee on Canals; and it was contended on the other side that the canal question must of necessity take the financial question connected with it, as well as the care and management, when it was finally decided so to alter the report of the committee dividing the subjects, as to give to the lieve it is proper, under such circumstances, for the Canal Committee the question of finances as well as the question of care and management. I do not believe Committee on Finances (even if we should assent that this their report in that regard shall be considered), to say that our report shall not be considered alongside of theirs, because, under strict parliamentary rules, governed by the decision of this Convention at that time, the Committee on Finance have trespassed over the line of their duty in regard to reporting anything on finance as connected with canals. I do not propose to make a question of that kind, but simply propose they shall go alongside of each other, as two reports can go, to the same committee. Either have precedence; I do not care which they take up first; and the other, moved as an amendment, I care nothing about that; but we should go together in committee; we should endeavor to discuss the whole question connected with the finances of the canals at the same time. It is for this reason I make this motion, in order to avoid any collision, and to have it entirely harmonious, so far as it regards the action of two separate committees in the action of the Convention on the report. There is no difficulty whatever in it. I will say, as one of the Committee on the Canals, that when we get into the Committee of the Whole, every question of the finance report can be taken up here, and both will be under the control of the Committee of the Whole, and we can move from time to time certain portions of our report as a substitute for his, but I move that it shall go to the same committee.

Mr. OPDYKE—I hope this motion will not prevail. It is very well known that the report of the Committee on Finance covers ground which is not covered, which could not properly be covered, by the report of the Committee on Canals. And, on the other side, the report of the Committee on Canals covers ground which could not properly be covered by the report of the Committee on Finance. That is to say, all that relates to the superintendence, repairs and management of canals specially belongs to the Canal Committee, and all which relates to the finances of the State, disconnected with the canals, belongs specially to the Finance Committee. Now, it will be seen that they embrace different subjects, but in one part they overlay, and that is in reference to the finances connected with the canals. Now, sir, this Convention has made it a special order that the report of the Committee on Finance go to the Committee of the Whole. When we come to that portion of it which comes in connection with, or, if you please, in collision with that of the Committee on Canals, it will be entirely competent for any member to offer the financial article reported by the Committee on Canals as a substitute for corresponding sections reported by the Committee on Finance. But if we bring them both in together I fear we shall run into inextricable confu-

sion. It is much better, it seems to me, that all that is exclusively appropriate to the canals shall be considered in Committee of the Whole by itself; and so in regard to the finances. I suppose this special order cannot be amended or altered without a two-thirds vote.

Mr. GREELEY—For the reasons stated by the gentleman from New York [Mr. Opdyke], I shall go exactly opposite to him. I voted all the way through against dissevering these two reports. I believed it was wrong then, and I believe it is wrong now to separate them; and we are, in effect, called upon to decide whether we shall devote one week or two weeks to this intricate question of finance. I am more disposed to devote this week than this week and next to that subject. I believe, as I believed in the beginning, that the two are essentially one question. I do not know how to vote on the finances of the State except in connection with the canals. I do not know how to vote in reference to the canals except with distinct reference also to the finances. I believe we must, in spite of the argument of the gentleman from New York [Mr. Opdyke], in any case, consider them together. He says, very truly, if we take up the report of the Committee on Finance alone we may at any time move, as an amendment, any section of the report of the Committee on Canals. But suppose we do not, and that we go through with one of them now, we have the other to take up afterward. Suppose the relevant sections of the report of the Committee on Canals are moved and defeated, one after the other, as amendments to the plan of the Finance Committee. We have not done with them yet. We have still to take up the report of the Canal Committee and consider it section after section, going through with it in Committee of the Whole and then in the Convention. I do entreat members who mean to get through and go home, to vote for taking up these questions together and disposing of them together in the course of the next week.

Mr. VERPLANCK—I would like to ask the chairman of the Committee on Finance whether he would be willing to have the report of the Canal Committee first considered.

Mr. CHURCH—No, sir.

Mr. VERPLANCK—I differ from the gentleman from Westchester [Mr. Greeley] in the opinion that it was an unfortunate thing for this Convention to sever these two committees. I think the effect upon the canals will be favorable and the welfare and honor of the State preserved by the vote given in the Convention separating these two committees in their duties. We know that the State of New York has the power in some way to do whatever shall be best for its interests and welfare, and if we shall determine to preserve and improve the canals, we can devise the means of doing it, so far as the financial question is concerned. Now, it seems to me it is right and proper to consider these two propositions together, or first to take up the report of the Canal Committee, so that when this Convention shall determine what they will do with the canals we can then resort to the other report and find out the means and manner of doing it. In addition to the saving of time, which has been

spoken of by the gentleman from Westchester [Mr. Greeley], and it is an important consideration, the reports show, and the reasons given for the reports show, that those subjects are closely connected. I hope, therefore, as the chairman of the Committee on Finance will not consent to have the report of the Committee on Canals take precedence, that the Convention will refer the reports to the same Committee of the Whole.

Mr. CHURCH—It seems to me that the gentlemen who have spoken on this question misapprehend the nature of the motion which has been made. There is no doubt but what this canal question must be considered in connection with the report of the Committee on Finance. No one objects to that. It must be so as a matter of course, and as a matter of necessity. The question whether we are to borrow money to enlarge these canals, or whether we are to use the revenues for that purpose, or whether they are to be enlarged at all, was necessarily connected with the consideration of the finance report. That is not the question here. They will be so considered; but the question here is, which report is to be the basis of the action of the Committee of the Whole? There cannot be two reports considered before the committee at once. There must be one or the other, and if you refer them to the same committee and go into the Committee of the Whole, you must take one or the other up as the basis of action. You cannot take both up at once. You cannot consider two articles together that are entirely different, making a different arrangement in regard to the finances of the State, at the same time, unless one is moved as an amendment to the other.

Mr. VERPLANCK—Will the gentleman allow me to ask him a question? How will you determine the question whether you shall borrow money for the purpose of improving the canals, or, if you resort to the canal revenue, what will be required, until you know what improvements are to be made?

Mr. CHURCH—If the gentleman from Erie [Mr. Verplanck] allows me to explain one single moment, he will see how easy and natural is the mode I propose. We go into Committee of the Whole on the report of the Committee on Finances. When we come to those provisions which the Committee on Canals has reported, the latter are moved as an amendment; and if that amendment is adopted it strikes out so many sections of the finance report and adopts so many sections of the report of the canal committee. It is perfectly simple and easy, and it is the only practical mode. There is no other way, and if we refer them to the same committee, that process must be gone through with. But I must make a remark in relation to what has been said by the gentleman from Onondaga [Mr. Alvord]. He puts his motion, as I understand it, on the ground that the Committee on Finance have overstepped the bounds of authority conferred upon them by this Convention, in reporting the financial articles in relation to the revenues of the canals. Now, I am willing, and desire, that this Convention shall decide that precise question. Let us see, for a single moment, what was referred to those two committees. The debts, revenues and expenditures of the State were

referred specifically to the Committee on Finances, and this subject of canals only was referred generally to the Committee on Canals. Now, as a legal proposition, as a question of construction, specific references take preference over general references. You may as well say that the Committee on Finances had no right to make any provision in relation to the wants of the judiciary, because there was a Committee on the Judiciary, and that they, therefore, have, not only the arrangement of the courts and the judicial machinery of the State in charge, but also all the financial arrangements necessary to pay them. This cannot be so. The debt, the revenues, and the expenditures, were referred to the Committee on Finances, and canals were referred the Committee on Canals. I do not object at all to the consideration of the report of the Committee on Canals in relation to the finances, but I do say that it would be disorderly, improper and unjust to make the report of the Committee on Canals the basis of the action of the Committee of the Whole. The report of the Committee on Finances stands first upon the general orders, and I insist that we should go into Committee of the Whole upon that report in the usual and ordinary way. I am quite willing these gentlemen shall move their report as an amendment when they see fit. But I am unwilling to have the report of the Committee on Finances superseded by the report of the Committee on Canals, and I am unwilling to have it placed in a position where it is impossible to have the committee go on without a collision. I do not understand why gentlemen are so tenacious on this subject, unless they desire to have the report of the Committee on Canals supersede that of the Committee on Finances as a basis of the action of the Committee of the Whole.

Mr. ALVORD—I do not desire to get into any unnecessary collision with the gentleman from Orleans [Mr. Church] on this subject, but I do desire to have him fair and frank enough, and also other members of this Convention, to look at the report of the committees in the original distribution of these matters, and see how it stood at the commencement of this Convention. The report of the committee was in this wise. There shall be a committee, No. 9, on the finances of the State; the canals, except their care and management; Committee No. 10, with care, superintendence and management of the canals, and all proper business, and the proper officers to be charged therewith, the mode of their election and appointment. After the discussion, which lasted some considerable time, upon a division of that question, that portion which says "canals except their care and management," was stricken out of the duties of Committee No. 9, and the whole matter of their care and management including their finances was left, as it ought to be, to the Committee on Canals. It was the deliberate judgment of the Convention at that time that to the canal committee ought to be intrusted the entire matter in regard not only to the general care and management, but in regard to the future of the canals, in reference to their care and improvement, all that necessarily carries with it the finances. It was again and again reiterated

upon this floor that that was the question which divided the Convention upon this report, that the Committee on the Canals had a right to take care of the financial aspect and the revenues of the canals as far as necessary for their improvement and their care and management, and they did not belong to, and should not be put into the hands of a purely financial committee. We went along and we have proceeded on our way in regard to this matter, as we were satisfied we were doing right, under the decision of this Convention at the commencement of our labors. We have brought in an article here on the care and management of the canals and of which improvement of the canals in the future is a part, and parcel of our report. Now, sir, the Finance Committee come in here and at once destroy all portions of that by their report and upon the gentleman's own motion, coupling the two together, his Committee on Finance and report of the Committee on Canals, they were set down as a special order for to-day, in their order or in such other order as the Convention at the time may order. Now, sir, all that we ask—notwithstanding the fact, as I said, that I believe the Committee on Finance have overstepped the limit which was thus deliberately and solemnly determined by the Convention at that time, is, that we may go to the committee in this way, even to be called minority report, if you please, which always goes to the same Committee of the Whole. There is no difficulty whatever in it. Again and again has it been practiced in this Convention, and by all legislative bodies. I will ask the gentleman where the report of his friend and colleague upon the committee [Mr. Hatch], goes? I would ask where the report of the others of his committee goes, who differ from him in regard to certain propositions and conclusions? They go to the same Committee of the Whole. All we ask in this regard is (even though we are considered a minority report), that we shall go to the same committee. I have no objection to his article being taken up first; but I demand as a right under the circumstances, that it shall go to the same committee and be considered at the same time.

Mr. CONGER—It may be well to refresh the memory of the gentleman from Onondaga [Mr. Alvord]. When this question was first discussed in the Convention, in the early weeks of our session, the gentleman from Onondaga [Mr. Alvord] will remember that thrice were the friends of the measure which he now advocates defeated, thrice was the report of the committee of sixteen sustained, and on the fourth vote the friends of the measure who now claim the question, was then irrevocably decided by the Convention, received a majority of one vote, if I remember, the vote standing sixty-one to sixty. After that, the gentleman from Onondaga [Mr. Alvord] will please to remember that in order to take away all doubt as to what was the disposition of the work of the Convention, what shares of the divers interests of the State should be committed to our several committees, the Convention raised a special committee on the salt works, one also on the charitable institutions, another on the industrial interests of the State, in fine special committees on every

subject of property which was separate and distinguishable from the canals as property of the State, so that the action of the Convention is to be understood only in this significance, that the finance committee had the general review and control of all the questions affecting all the financial interests of the State on every species of its property, and that all that was left to the Committee on Canals was the special investigation of that subject, just as it was left to the Committees on Charitable Institutions, on Industrial Interests or on the Salt Works of the State, to investigate all special questions having reference to such special objects, without any interference with each other whatever, or with the supervisory control of the financial committee over the general questions of the revenue, debt and the finances of the State. I, therefore, think, sir, it is utterly impossible here for the gentleman to urge that this question was decided in the early days of our sessions, on any such ground as he has stated. Moreover, Mr. President, I think it is beyond all doubt that the position which the gentleman from Orleans [Mr. Church] has taken, is the only safe and proper position for the Convention to take at this time, and that is that we shall go into Committee of the Whole on the subject of the finances considered as such. As I predicted in the early hours of our sessions, when it was proposed to raise two separate committees on this subject, with clashing and colliding views, we would have plenty of reports from each committee separately; the result has justified what I then declared, for we have three or four reports from the Committee on Finance, and quite as many from the Committee on Canals. It is sufficient for all practical purposes, and it is within the wise rules of legislative experience and polity for us to take up the question of the finances as the first question, and to give the gentlemen who have peculiar notions in regard to the enlargement of the canals (for the purpose of accumulating more debt upon us at this time), the opportunity of moving their amendments. Just as sure as we undertake to save time by bringing in more than one report before the Committee of the Whole, we shall experience the same thing which has been met on this floor most of the time since we have met here in Convention, of giving ourselves a great deal more trouble to save time and consume a great deal more time than if we had left discussion and the order of business to their legislative order and regular sequence.

Mr. HALE—I do not rise to take part in this discussion, but merely to correct an error into which the gentleman from Onondaga [Mr. Alvord] has fallen. The gentleman from Onondaga [Mr. Alvord] has stated that, by the vote of this Convention in the early part of its session, it was determined that the Committee on the Finances of the State should be excluded from the consideration of the question of finances, applied to canals. I merely wish to call the attention of the Convention to the facts. The Committee upon the Arrangement of Business reported, as we all remember, in favor of confining the Committee on Canals to the care and management of the canals. The gentleman from Ontario [Mr. Folger] moved to amend that by confining the Committee on Finances to the finances of the State only, leaving the

other, Committee on Canals simply. A vote was taken upon the motion, which will be found on page 76 of the debates, which resulted in a tie vote, ayes 67, and nays 67. I voted in the negative, against the proposition of the gentleman from Ontario [Mr. Folger]. On the following day I changed my vote, and stated my reasons for doing so, which will be found on page 77. I made use of the remarks to be found there, and I did it with a desire that if the gentleman from Ontario [Mr. Folger] who moved this, or the gentleman from Onondaga [Mr. Alvord], who was the champion of this change, differed from me they might correct me, in which case I should not have changed my vote. My remarks were as follows:

"As I understand the effect of that change, if made, it will not be to deprive the Finance Committee of the consideration of any financial question with reference to the canals. Subdivision 9, as amended, will then give to the Finance Committee and make it their duty, to consider 'the finances of the State, the public debt, revenues, expenditures and taxation, and restrictions on the powers of the Legislature in respect thereto.' In case, therefore, any question arises in relation to the canals, which is essentially a financial question, and which involves, as a leading subject, a question of finance, if I understand the effect of the motion of the gentleman from Ontario [Mr. Folger] it will still be properly referred to that committee, and will be a proper subject of investigation by it."

Upon making that statement, and upon its being acquiesced in by the mover of that measure, I changed my vote and voted for a reconsideration and for the proposition of the gentleman from Ontario [Mr. Folger], and the amendment was carried by a vote of 62 to 61, as will be found on the 88th page. Without wishing to intimate any opinion as to what disposition should be now made of the question, I wish to correct the gentleman in his statement that the Convention at that time made any determination from which it appears that the Finance Committee has been guilty of transgressing the limits prescribed for it by the committee in considering the question of finance, as applied to the canals.

Mr. SEYMOUR—I rise to advocate the motion of the gentleman from Onondaga [Mr. Alvord], simply because I believe, by considering these two reports together, the Convention will save much of its time. They relate substantially to the same subject, because it must be obvious to every gentleman of the Convention, that the main portion of our finances are connected with the canals. It is from the use and management of the canals of this State that we derive the greatest part of our revenue, and the great question for the future in reference to the finances of the State, hinges upon the conduct and management of the canals, and the question whether they shall be adapted to a larger size of boats in their navigation. These are the subjects that are proposed by the Committee on Canals, and I believe, for one, it is within the sphere of their duty and of the subject that was referred to them by the Convention, that they should consider and report

not only in relation to the care and management of the canals, but also in relation to their structure and improvement in the future, and that they could not do so with propriety without alluding to the financial question. This financial question is the great question treated of in the report of the Committee on Finance. It is also the great question treated of in the report of the Committee on Canals. The two subjects relate intimately to each other, and if we were to go into committee upon the report of the Committee on Finance alone we should ultimately find ourselves discussing at large the very ground occupied by the report of the Committee on Canals. This being the case, and believing that it is perfectly parliamentary that these two subjects and the two reports of these committees should be considered together, and certainly not meaning any disrespect to the very able Committee on Finance, who reported first, I certainly hope that the Convention at this period of its session, approaching the time when we had hoped to have disposed of the important matters before us, will consent, with a view of saving time, and not going into a discussion that must necessarily be a review of the very ground which we shall cover in this discussion of the financial question, that we shall consider both of these reports together. It is emphatically one subject and should be disposed of in one committee.

Mr. AXTELL—I move the previous question on the motion of the gentleman from Onondaga [Mr. Alvord].

The question was then put on the motion of Mr. Axtell, and it was declared carried.

The PRESIDENT then announced the question to be on the motion of Mr. Alvord.

Mr. VAN CAMPEN—I ask the ayes and noes on this proposition.

A sufficient number having seconded the call, the ayes and noes were ordered.

The question was then put on the motion of Mr. Alvord, and it was declared carried by the following vote:

Ayes—Messrs. Alvord, Andrews, Armstrong, Axtell, Ballard, Barker, Beadle, Beals, Beckwith, Bell, Bergen, Bickford, Bowen, E. P. Brooks, Carpenter, Cheritree, Clinton, Cooke, Corbett, Curtis, C. C. Dwight, T. W. Dwight, Endress, Ewats, Farnum, Folger, Fowler, Francis, Fuller, Gould, Graves, Greeley, Hadley, Hammond, Hand, Harris, Hatch, Hiscock, Houston, Hutchins, Ketcham, Krum, Landon, Lapham, A. Lawrence, M. H. Lawrence, Ludington, McDonald, Pierrepoint, Pond, Potter, President, Prindle, Prosser, Reynolds, Rumsey, Schoonmaker, Seymour, Spencer, Stratton, Strong, Tappen, M. I. Townsend, Van Campen, Van Cott, Verplanck, Williams—67.

Noes—Messrs. A. F. Allen, Barnard, Barto, E. Brooks, J. Brooks, Church, Cochran, Conger, Daly, Garvin, Gross, Hale, Hitchman, Kinney, Livingston, Lowrey, Mattice, More, Morris, Nelson, Opdyke, Paige, A. J. Parker, Robertson, Roy, Schell, Schumaker, Sherman, Smith, Tilden, S. Townsend, Wales, Wickham, Young—34.

The Convention then resolved itself into Committee of the Whole on the report of the Com-

mittee on the Finances of the State, and the report of the Committee on Canals, Mr. SHERMAN, of Oneida, in the chair.

The SECRETARY read the report of the Committee on the Finances of the State.

Mr. ALVORD—I call for the reading of the report of the Committee on Canals, commencing with the sixth section.

The CHAIRMAN—It will be read as soon as the first section of the report of the Committee on Finance is read.

Mr. ALVORD—I insist that I have the right to claim that before the first section of this report is read, that these sections of the report of the Committee on Canals should be read.

Mr. E. BROOKS—Why not read the whole article?

Mr. CHURCH—According to the statement made by the presiding officer, also with my consent, that portion of the Committee on Canals having relation to the financial question, should be sent to the Committee of the Whole. I have no objection to the whole being read.

The CHAIRMAN—The Chair is of the opinion that the gentleman has no right to call for the reading of the portion referred to at this time.

Mr. ALVORD—I move that the Secretary proceed to read the sections of the report of the Committee on Canals.

The CHAIRMAN—Does the gentleman from Onondaga [Mr. Alvord] appeal from the decision of the Chair?

Mr. ALVORD—I do not wish to appeal from the decision of the Chair. I move that those sections be now read.

Mr. CONGER—I rise to a point of order, that the motion of the gentleman from Onondaga [Mr. Alvord] is virtually an appeal from the decision of the Chair; the Chair not only having decided that the reading of that portion of the report was not in order, but when he took his seat as chairman of the Committee of the Whole, having announced the order in which the two reports should be taken up. The proper course for the gentleman from Onondaga [Mr. Alvord] to pursue is to pursue his plan by appealing from the decision of the Chair.

Mr. E. BROOKS—I hope there will be no point of order raised at this time on these sections. We are all in the pursuit of knowledge under difficulties. We had one report read, and I hope by the general consent of the Convention the report of the Committee on Canals may be read also.

The CHAIRMAN—The Chair is of the opinion that the gentleman can have the article read, as part of any remarks he may make, but he has not any right to call for the reading of the article as a matter of right.

Mr. CONGER—With that explanation I will withdraw the point of order.

Mr. ALVORD—I take the liberty to say I do not desire to appeal from the decision of the Chair, because I do not wish to raise any question unnecessarily, but the Chair will recollect, and so will the gentlemen of this Convention recollect that, but a short time ago, by a very positive vote in regard to that matter, for the very purpose of considering these financial questions as they are in each report together, they were both

sent to the same committee. It strikes me, therefore, I have the right and if the Chair should so order I have the right to have this read through. I do not complain of the fact that the Chair has ruled, that when we go back to the beginning and commence with the original, that the first section of the Finance Report is the first thing to be offered, and all amendments offered to it may be portions of the report of the Committee on Canals, but being part and parcel of the same thing, I move it be read.

The CHAIRMAN—The Chair rules that the gentleman should not call for the reading at the present time, but will submit it to the Committee.

Mr. GREELEY—What is the objection to reading the whole article?

The CHAIRMAN—That is not a question for the Chair to answer.

The question was then put on the motion of Mr. Alvord, and it was declared carried.

The SECRETARY then read the report of the Committee on Canals.

The SECRETARY proceeded to read the first section of the report of the Committee on Finance, as follows:

SECTION 1. The outstanding debts of the State and other liabilities for the payment of which the canal revenues are pledged by the terms of the Constitution of 1846, and the amendment of 1854, are the following, on the 1st day of July, 1867:

The old canal debt of 1846 (so called),...	\$3,258,060 00
The general fund debt,.....	5,642,622 22
The canal debt under amendment of 1854.....	10,807,000 00
The floating canal debt,.....	1,700,000 00
Advances to the canal debt sinking fund and other canal purposes, by taxation since 1846, and simple interest at five per cent,.....	18,007,289 68

Making an aggregate of,.....	\$39,414,971 90
The debt of the State for which the canal revenues are not pledged or liable, is the bounty debt (so called) of,.....	26,944,000 00
Besides which is the contingent debt of the State, of,.....	218,000 00

The hour of two o'clock having arrived, the PRESIDENT resumed the chair, and the Convention took a recess until half-past seven o'clock.

EVENING SESSION.

The Convention re-assembled at half-past seven o'clock, when proceedings were resumed.

Mr. LAPHAM—Owing to the illness of Mr. Alvord, upon whom will devolve much of the burden of sustaining the report of the Committee on Canals, which, with the report of the Committee on the Finances of the State, is the special order for this evening, I move that the consideration of those reports be postponed until to-morrow, immediately after the reading of the Journal.

The question was put on the motion of Mr. Lapham, and it was declared carried.

Mr. BARNARD—I move that this Convention do now adjourn.

The question was put on the motion of Mr. Barnard, and it was declared lost.

Mr. SHERMAN—I move that the report of the Committee on the Militia and Military Officers

be taken up. General Morris was here this morning, and I presume he will be here soon, or, if he is not, we can rise and report progress.

Mr. BARTO—I hope that that report will not be taken up unless General Morris is here. General Morris may be out of town, and I hope the report will not be taken up until he is here.

Mr. SHERMAN—If the gentleman from Tompkins [Mr. Barto] does not desire to have the report taken up, I will withdraw the motion.

Mr. S. TOWNSEND—I would suggest that the Convention proceed to the order of resolutions. It is always a prolific one. No doubt gentlemen have resolutions on the table which they desire to call up for discussion, and it seems to me those resolutions could properly be discussed now.

The PRESIDENT—The Chair will call the daily order of business.

Mr. HAMMOND presented the petition of Ira Sayles, of Allegany county, on the subject of education.

Which was referred to the Committee on Education.

Mr. BEALS presented the petition of E. Remington and 134 others, citizens of Ilion, Herkimer county, in favor of separate submission of a constitutional clause prohibiting the sale of intoxicating liquors.

Which was referred to the Committee on Adulterated Liquors.

Mr. REYNOLDS—I desire to ask leave of absence for my colleague, Mr. Clarke, who is detained at home by sickness. He expects to be able to be here by Thursday or Friday of this week.

There being no objection, leave was granted.

Mr. VERPLANCK—General Morris is now in his seat.

The Convention resolved itself into Committee of the Whole on the report of the Committee on the Militia and Military Officers, Mr. HARRIS, of Albany, in the chair.

The SECRETARY proceeded to read the first section of the report, as follows:

SEC. 1. A militia force shall be maintained in order to repel invasion, suppress insurrection and to aid in the enforcement of the laws; and for this purpose all able-bodied male citizens between the ages of eighteen and forty-five years shall be annually enrolled under such regulations as shall be established by law.

There being no amendments, the SECRETARY proceeded to read the second section, as follows:

SEC. 2. The militia shall be divided into the active and reserve forces. The active militia shall be designated the National Guard of the State of New York; its number shall be fixed by law, and it shall be at all times armed, equipped and disciplined. All enrolled persons not belonging to the National Guard shall constitute the reserve force. All persons who shall have been honorably discharged from the army or navy of the United States shall be, in time of peace, exempt from service in the militia; and all such inhabitants of this State, of any religious denomination whatever, as from scruples of conscience may be averse to bearing arms, may be exempt therefrom upon such conditions as may be provided by law.

Mr. BALLARD—I move to amend by inserting after the words "army and navy," in the seventh line, the words "or volunteer forces of the United States." I do this for this purpose: As the section now reads the judge-advocate-general, on the staff of the Governor of this State, construes the expression "discharged from the army or navy," as meaning the regular army or navy, and consequently those who have been honorably discharged, and who have done meritorious service in the volunteer force of the United States, no matter how worthy, are yet subject to enrollment in the National Guard of this State. Last winter this same language was employed in the militia bill that was introduced in the Assembly, and it came before the sub-committee of sixteen in the Assembly, and this amendment that I now propose was then introduced into the bill, and is now to be found in the statute books of this State. So that in enrolling the militia there shall not be that distinction between the regular army and the volunteer army of the United States; that persons who have been engaged in the volunteer army of the United States shall stand on an equal footing as to exemption with those of the regular army, and it will strike every one in this Convention, I think, that this amendment ought to prevail, for the reason that the section, as it now stands, creates an invidious distinction. It exposes to enrollment and military service in the ranks even those who have been commissioned in the volunteer service of the United States. They would still be subject to go into the ranks of the National Guard of this State. That ought not to be so. Hence the language of the amendment proposed will put it beyond doubt, exempting "all persons honorably discharged from the army or navy or volunteer force of the United States."

The question was put on the amendment of Mr. Ballard, and it was declared carried.

A count was called for.

Mr. BALLARD—My attention has been called to an expression in the remarks appended to the report of the committee, showing that they intended to reach these persons by this language that they have used. But it will be found that there was a printed opinion of the judge-advocate-general of this State, sent broadcast in a circular, to the effect that this language I have drawn the attention of the Convention to, does not reach volunteer officers or soldiers of the army. It is confined to the regular army. The amendment I propose meets the purpose really intended by the committee. It seems to me this language I have suggested should be used to leave no doubt on the question. The committee use this language in their remarks:

"The list of exemptions from the militia service has been increased by adding such persons as have served in the volunteer service, army and navy, or have been honorably discharged from either."

Under the section as it now reads, it is precisely as it stood in the militia bill of 1862, under which the opinion was given by the judge-advocate-general that persons belonging to the volunteer force of the United States shall not be exempt.

Mr. BARTO—I move to amend by inserting

the words, "after one year's service." This amendment of Mr. Ballard exempts every one mustered in or mustered out, although they may not have been in service.

Mr. BALLARD—I hope that amendment will not prevail because one year has already elapsed. I understand the amendment to be after they served one year in the State.

Mr. BARTO—After they shall have served one year in the United States forces.

Mr. GREELEY—I hope the amendment will prevail, otherwise we may have men called out to repel or repress a Fenian raid or an Indian trouble, or to repress an Indian incursion that might be threatened in the West. We have often our militia called upon to serve for a little while in the national service. I think the amendment of the gentleman [Mr. Barto] is exceedingly proper.

Mr. BARTO—The section as it now reads will exempt a large number of the National Guard who served one hundred days at Elmira. I propose to add after the words "volunteer forces" the words "who have served one year."

Mr. BALLARD—I will state this as a matter of fact that in the closing year of the rebellion there were several regiments which went from this State, and who were immediately engaged in the battles south of Petersburg, including Five Forks, and other engagements I cannot now name (but they will occur to the memory of almost every member of this Convention) they were actually engaged at the front and many of them were wounded for life, and the war having closed a few days after those battles, are now at home, many of them bearing their scars to this day; and yet under this amendment would be liable to be enrolled in the militia of this State. We have many in this State that were taken to the front the last year of the rebellion who were wounded in those battles; who, under this one year provision, would still be liable to be enrolled. Now, in regard to being called out in time of rebellion, invasion, or to suppress insurrection, the exemptions would not apply; these exemptions in the Constitution apply to enrollments in time of peace. I, therefore, hope that this amendment I have made will prevail exactly as proposed, because it will then be in accordance with the language of the present militia act in this State as it now stands on the statute books of 1867.

The question was put on the amendment of Mr. Barto to the amendment offered by Mr. Ballard, as amended, and it was declared carried.

The question was again put on the amendment of Mr. Ballard as amended, and it was declared carried.

Mr. VERPLANCK—I move to strike out in the third line of the second section the words "its number shall be fixed by law," and insert "its number shall be 30,000." Early in the session of this Convention I received a letter from General William F. Rogers, who commands the Thirty-first brigade of the National Guard of this State, and who commanded the Twenty-first regiment of the New York volunteers with great efficiency and ability during the war of the rebellion—an officer who has devoted a good

deal of time to the subject of the organization of the National Guard. I submitted that letter to the Convention; it was referred to the Committee on the Militia. General Rogers proposed 25,000 as the number of the National Guard. The adjutant-general of the State, Gen. Marvin, was of the opinion that the number should be fixed at 30,000 instead of 25,000. I submit to this Convention that if we propose to have a militia, a National Guard armed and equipped at the public expense, and furnished with their arms and tent equipage, we should fix the number here, and not leave it to the Legislature, because one year they may have one number, another year another number, or perhaps abolished altogether. I think, therefore, for the preservation of this corps and the efficiency of our militia system, that the suggestion of General Rogers, establishing a definite number, sustained, as I understand it is, by the opinion of the adjutant-general of the State, will be adopted by the committee.

Mr. MORRIS—According to the report of the inspector-general of the State the number of the National Guard was 52,247, and according to his opinion this number is not too much for the ordinary exigencies that may arise. I submit that the Legislature, at the proper time, when dangers may threaten, is the best judge as to the number that should be organized, armed and equipped, and it is supposed that the Legislature has sufficient discretion not to have too large a standing force; and inasmuch as we cannot predict what may be the necessities for armed forces for twenty years to come, it seems to me ill advised to limit the number, and especially to one so small.

Mr. VERPLANCK—It will be recollected that the number of enrolled militia does not depend upon the number of the corps to be armed and equipped at the expense of the State. The latter is a nucleus about which a large body of militia force can rally in times of necessity, and I submit that 30,000 men scattered over this State in regiments are enough to preserve the military spirit within the State and to educate officers in military science. This national guard system will be much better preserved by reducing it to a certain system as to numbers and expense, than to leave it uncertain, depending upon the caprice of the Legislature. This will not take away from the Legislature the power to cause the remainder of the militia to be called out if their services should be required. The war has demonstrated the fact that American citizens very soon become soldiers, and with all the experience which the officers who command the corps of 30,000 will have, and the knowledge non-commissioned officers and privates will acquire will enable a force very soon to be organized as large as the exigencies may require, and I insist, therefore, as a matter of money that we should limit this force by a constitutional provision, and to effect that purpose I hope the committee will adopt the amendment I have proposed.

Mr. DUGANNE—I should be very much inclined to favor this amendment, if we could also fix the relative future dangers which may threaten the State from border or internal troubles. I fear we cannot do so, and, therefore, I propose, as an

amendment to the amendment, to strike out, in the third line, the words "its numbers" and insert "the number of regiments and the minimum force of each to be;" so that it will read, "the number of regiments and the minimum force of each to be fixed by law." My object in offering this amendment is that there shall be a certain number of regiments designated, and that each shall have a minimum force in time of peace, in order that all our regiments shall be skeleton regiments, which may be filled up at any time, in case of emergency, to the full complement of each. By this means we may have regiments scattered all over the State, each enrolling its minimum, and each capable of being increased to a maximum whenever war shall threaten. Thus our State forces, fully disciplined, will be within reach at any time of emergency. It is a subject to which military men have given a great deal of attention. I have had a variety of correspondence on the subject, and I find a general feeling in favor of constituting skeleton regiments throughout the State, with their full complement of officers, capable of being expanded into full regiments when any emergency threatens. I therefore propose this amendment, so that it will read, "the number of regiments and the minimum force of each shall be fixed by law."

Mr. VERPLANCK—I would suggest to the gentleman from New York [Mr. Duganne] that his proposition does not change the section as proposed by the committee; that the section as reported by the committee leaves this to be fixed by law.

The question was put on the amendment of Mr. Duganne, to the amendment offered by Mr. Verplanck, and it was declared lost.

Mr. E. BROOKS—I would suggest to the gentleman from Erie [Mr. Verplanck], to meet the objection raised by the gentleman from New York [Mr. Duganne], who foresees there may be some time or occasion when a larger number than thirty thousand may be required, that he insert the words "in time of peace." That would meet the objection raised, and allow the Legislature to raise a larger number in time of war.

Mr. VERPLANCK—Certainly; I will accept that.

The question was put on the amendment of Mr. Verplanck, as amended, and it was declared lost.

Mr. RUMSEY—I offer this amendment. The SECRETARY proceeded to read the amendment, as follows:

At end of line three, section two, add "and such portion thereof as the Legislature shall direct."

Mr. RUMSEY—If we propose to make a constitutional enactment to arm, equip and discipline the whole body of the National Guard, it will, I apprehend, involve a very heavy expense if the number should be large; and it seems to me we should leave it to the Legislature to fix the number. Now, if we leave it to the Legislature, and do not make it mandatory upon them to arm and equip the whole of them, we may perhaps have the whole of them enrolled as the National Guard and escape a large item of expense by not having them all equipped.

Mr. C. C. DWIGHT—The object stated by the gentleman, I submit, is attained already in the report of the committee. The militia is divided into two parts, the active and the reserve forces. It is only the active force which the section requires should at all times be "armed, equipped and disciplined," and the number of that active force thus to be armed, equipped and disciplined, is to be fixed by law, which accomplishes all that the gentleman suggests. The great body of the militia of the State will still remain the reserve force, and will not be armed, equipped and disciplined, but only enrolled.

Mr. MORRIS—The marked distinction which is drawn in this report between the National Guard and the reserve militia, renders the National Guard an attractive arm, and it keeps the reserve, as its name implies, constantly on hand for any extraordinary occasion. If we were to have the organization without the arming of men and equipping them, it would be difficult to have all the necessary drills and parades, and there would be none of that *esprit du corps* which renders the National Guard attractive. I therefore submit that the National Guard, unless armed and equipped as herein designated, ceases to be the kind of arm which is intended.

Mr. RUMSEY—The chairman of the Committee on the Militia thinks this amendment ought not to pass, I will withdraw it. I do not know much about the militia.

Mr. MORE—I move this amendment to the second section:

Add after the words "United States," in the seventh line, the words "or have paid commutation or furnished a substitute under any act of Congress."

Mr. AXTELL—I hope that this amendment will not prevail. I do not wish to make any extended remarks in regard to it; but it must strike every gentleman on this floor that such a provision as this would place men who evaded military service by commutation or by sending substitutes, on a level with the men who went into the field, and bore the brunt of the battle, and would thus practically degrade those who have done their duty. I have some opinions of my own with regard to the plan of commutation and substitution which I do not care to express here. But I confess that at the time I had in general an intense dislike to that whole plan; it seemed to me generally to be merely a shield for cowards. I trust that this amendment will not be adopted.

Mr. SEAVER—It strikes me that this amendment should not prevail. The committee will perceive that there will be a double exemption in case it shall be adopted. Those who paid their commutation simply furnished the government with the means to procure substitutes or volunteers to take their places in the ranks, and for this they will, under this amendment, be exempt. Those who furnished substitutes will also be exempt; so we will have those who paid commutation or furnished substitutes exempt, and we will have those who served in their stead also exempt, thus giving us a double exemption, which ought not to be. The theory of the government, in respect to military service, is that every man owes the government a personal service. He is bound

to discharge that service in case of emergency. If you exempt him on account of paying his three hundred dollars commutation or furnishing a substitute, you must also exempt the man who performed that service for him. One or the other ought to be held under the militia laws of the State. It strikes me that the person who did the actual service is the one entitled to the exemption as provided in this article, and I hope that such only will receive it.

The question was then put on the amendment of Mr. More, and it was declared lost.

Mr. DUGANNE—I propose to renew, in substance, my amendment, at the same time endeavoring to meet the purpose of the gentleman who proposed thirty thousand as the number of the National Guard, which I apprehend to be a very good number for the minimum force. My amendment is as follows:

Strike out in line three the words "its number shall be fixed by law, and insert "the number of regiments in time of peace shall be one hundred, the minimum force of each three hundred men, to be located or districted by law."

The question was put on the amendment of Mr. Duganne, and it was declared lost.

Mr. ROBERTSON—I move to amend the section. Strike out the words "of any religious denomination whatever." As the section now reads it is somewhat ambiguous. It is doubtful whether it applies to the inhabitants of the State who may have conscientious scruples against bearing arms or to those who belong to religious denominations which entertain scruples against and may be averse to bearing arms. I see no reason why individuals who do not belong to religious denominations should not be equally excused with those who do belong to religious denominations. I apprehend it will be very difficult in practice to determine whether a party belongs to a religious denomination in such manner as to exempt him from the provisions of this law. I think if the principle is adopted at all it should be for every one who, from scruples of conscience is averse to bearing arms; it is not necessary he should belong to a religious denomination. For the purpose of removing the obscurity I move to amend by striking out the words I have stated.

Mr. C. C. DWIGHT—I would like to ask the gentleman how he will ascertain, in case his amendment is adopted, what persons would be exempt under this section of the Constitution. I submit it would leave every man to allege in his own individual behalf scruples of conscience, concerning which no tribunal would be competent to decide. This section as it now stands, as it stood in the Constitution of 1846, was intended to cover such sects as the Quakers, Shakers and others, possibly, who were well known, historically and otherwise, to entertain, as an article of their religious belief, scruples against military service.

Mr. ROBERTSON—In answer to the gentleman's question, I apprehend it will be just as easy, if not much easier, to ascertain whether a person has scruples against bearing arms, than it will be to ascertain whether he belongs to a religious denomination. As this section reads now it certain-

ly would appear that the conscientious scruples which would exempt, were those of inhabitants of the State, who belong to religious denominations, and not of sects, which profess to have tenets averse to bearing arms. This I cannot believe to have been the intention. If so, I apprehend there are certain sects in this State which would have numerous converts in the course of the future, if by joining those religious denominations they are to be excused from bearing arms. If, however, scruples of conscience are to belong to the individual rather than the denomination to which he nominally belongs, I apprehend that can be determined with just as much ease as whether he belongs to a religious denomination. In the next place, some of the denominations which are sometimes called religious, would be deemed by many others irreligious, and yet those who belong to them must equally be excused from bearing arms. For if the practices that prevail in Utah could at any time be recognized in this State, persons might be excused from bearing arms because they belong to that denomination of Mormons. I believe a religious denomination can be got up in a very short time at very short notice, and a creed to match. Men can easily get up a religious denomination with some declaration of principles, in something like a religious form, for the purpose of exempting themselves from the obligations which they owe to the State, to serve it in a military capacity. Therefore, not only for the purpose of removing the ambiguity, but to enable the proper authorities to determine in each particular case whether individuals are to be required to bear arms because they have no scruples of conscience against it, I move to strike out these words. If it is the intention of this Convention that persons belonging to a religious denomination, a part of whose tenets it is that no person ought to bear arms, shall not be liable to this duty, then, certainly, some phrase should be adopted which would express more clearly whether it is the denomination or the particular individual who is to be excused from military service.

Mr. C. C. DWIGHT—All I desire to say is, that the language used in this section is precisely the same as that used in the Constitution of 1846, and that the experience of twenty years in the construction of that section has shown no difficulty whatever in applying it to cases that have arisen under it.

Mr. GREELEY—I am in favor of this amendment, first, because it shortens our proposed Constitution, which is very certain to be too long. Wherever you can leave out a word without injuring the sense, I am in favor of its omission. Now, there is not one object secured by the section as reported that is not equally secured by this amendment. In the next place, I am opposed to introducing religious differences into our Constitution when it is at all possible to avoid recognizing them. This State is not a theological State. The desire is, very generally, to have theological distinctions ignored in government, so far as possible. In the third place, an improper use may be made of the exemption. If there be danger that scruples of cowardice or scruples of laziness shall

seek exemption from military duty, as well as scruples of conscience, let that danger be guarded against in settling the conditions of exemption. Let them be made sufficiently onerous to overcome that objection. I see no good secured by retaining these words, while they seem to intimate that a person, by belonging to a particular religious denomination, may escape any public duty. I am opposed to that, and, therefore, desire that these words be stricken out.

Mr. DUGANNE—I am in favor of the amendment, and I am in favor of it partly for the reason adduced by the gentleman from Westchester [Mr. Greeley], and partly because I deem it a cardinal principle of our theory and practice, as a republican State, that every citizen is bound to bear arms when called upon, unless disabled, or unless prevented from some cause over which the State can have no jurisdiction. I would strike out "scruples of conscience" and would make every man who refuses to bear arms, and who is of the military age, exempt upon certain conditions. Probably those conditions would embrace a fine, but the principle should be recognized that every citizen is bound to do his part in protecting the State. I am opposed entirely to the exemption of invalids and disabled men, not only from the duty of bearing arms, but from the duty of supporting, by money contributions, those who do bear arms. A man is now exempt by law because he is disabled, because he is weak or feeble and needs protection; he is exempted not only from the duty he owes the State to defend that State, but also from the responsibility which ought to lie upon him, to contribute toward the efficiency of those who *do* defend the State, and those who *do* protect the helpless and weak. I therefore believe we should simply have in this section some provision which will cover all aversion to bearing arms without reciting anything at all about scruples of conscience or any other scruples. I should be, therefore, in favor of the amendment to strike out the words "scruples of conscience," and let it read "opposed to bearing arms," and then let the man who desires exemption have such conditions imposed upon him, as shall make it necessary for him either to purchase his exemption with money, or to stand ready to do service as a military citizen.

Mr. BICKFORD—I offer the following amendment:

Add after the word "arms," in the eleventh line, the words "and voting."

I have no sort of patience with men who will vote, and then refuse to bear arms. As everybody knows, there is really no force in the ballot only as there is a bullet behind it. We are all pledged, the force of the State is pledged, to back up every man's vote. When the people have voted, if there is any opposition to the officers who are elected, the whole force of the State is pledged to sustain every man's vote, who votes with the majority. Now a man who will vote for the bearing of arms in case the will of the people is resisted, and will then claim that he has a scruple against the bearing of arms when he has no scruple in voting, which implies the sanctioning of the bearing of arms, is a quibbling with which I have

no sort of patience. A man should not be exempted unless he stands aloof and says: "I will do nothing to aid the government; I will not vote, I will not do anything which shall compel other people to bear arms. Then I will claim exemption myself." Until he takes that attitude there is no sort of sense in his claiming exemption on account of scruples of conscience.

The question was put on the amendment of Mr. Bickford, and it was declared lost.

Mr. COOKE—I did not intend to occupy the time of this committee, but I wish simply to say that I prefer the amendment suggested by the gentleman from New York [Mr. Duganne] to that proposed by his colleague [Mr. Robertson] for the reason that it states the question more directly. It is less insidious. The effect of the proposed amendment, as has been well stated by the gentleman from Cayuga [Mr. C. C. Dwight], is to strike at the very system of equipping and organizing the active military force of the State. Because to exempt a man from bearing arms simply because he has conscientious scruples is to say that he need not bear arms at all unless he chooses. I would like to ask the gentleman who moved this amendment how he would fill up one of these skeleton regiments, how he would draft men into it, or what compulsory measures would be successful in forming regiments in the active militia. Call on a man, or draft a man, and his excuse is that he "has conscientious scruples against bearing arms," and this excuse must be allowed. This is the effect of it. It is more direct and more honest to say that no man who is averse to bearing arms in the National Guard shall be forced to do so. It would answer the purpose suggested by the gentleman from Westchester [Mr. Greeley] a good deal better to strike out all of this article relating to compulsory service in the militia. It would make the section shorter. The next best thing with a view to shortening the provision, is to strike out the last four lines of the section which exempts any person of a religious denomination, having conscientious scruples against bearing arms. I am satisfied to take the section as it is reported. It is reported, so far as this matter is concerned, in the exact language of the existing Constitution, which, so far as I know, has worked well enough for the last twenty years, and I do not know any reason to anticipate any difficulty with it for the twenty years to come.

Mr. KRUM—I offer the following amendment: Strike out in section two all after the eighth line.

This amendment, if adopted, strikes out all exemption on account of conscientious scruples. I myself believe that no individual has a right to refuse to maintain the government of his State on account of any conscientious scruples. Therefore I move this amendment.

Mr. GREELEY—I do hope the gentleman will allow us to have a vote on the amendment of the gentleman from New York [Mr. Robertson]. Some fifty propositions may be offered, each one of which some gentleman thinks is so much better than any one preceding. I hope we shall be allowed to vote on the amendment of the gentleman from New York [Mr. Robertson], then I do not care how many amendments are offered.

Mr. KRUM—For the purpose of getting a vote on the amendment suggested I will withdraw my amendment.

Mr. GOULD—It is well known that there are at least two denominations in this State who are opposed to bearing arms—the religious society of Friends and the religious society known as Moravians. It is no new matter with them. They have, ever since their organization, professed to be opposed to the bearing of arms. They believe that their religious duty absolutely requires them to abstain from every form of warfare, under any circumstances whatever. In times past there has been a great deal of persecution of, and a great deal of suffering on the part of those two religious bodies. They are perfectly peaceable; if they are warned to attend a militia training they refuse to go; and when the marshal comes to levy upon their property, if they have nothing to seize, they take their persons. In times past every training brought into the jail its crop of members of the Society of Friends and the Society of Moravians who lay peaceably and quietly imprisoned until men got tired of keeping them, and then they were turned out. When they had anything to be levied upon it is known that they were terribly victimized. Those marshals who have but very little conscience know that these men will not interfere in any way—that they will not resort to law in order to right themselves. The consequence has been that large amounts of property have been taken and sold, and there is scarcely an instance on record where, if there has been any overplus, it has been returned. They never seek for it; they never ask it. If, therefore, this section is not modified in its provisions they must suffer a great deal. I hope the same provisions with regard to conscience which have been observed in this State so long will continue to be observed. I trust there will be no steps backward in this respect. I think the fair name of the State will suffer if, after allowing this liberty of conscience, it now turns around and causes as much suffering as will be caused to the two denominations of which I have spoken. I hope the section will be allowed to remain as it is reported since it has worked so well in practice.

The question was put on the amendment of Mr. Robertson, and it was declared lost.

Mr. KRUM—I renew my amendment to strike out in section 2 all after the eighth line.

The question was put on the amendment of Mr. Krum, and it was declared lost.

Mr. BICKFORD offered the following amendment:

Add after the word "whatever," in the tenth line, the words "whose discipline forbids," and then strike out the rest of the line.

This amendment, Mr. Chairman, will remove any ambiguity in the matter.

Mr. SEAVER—It strikes me that the adoption of that amendment would largely increase the denominations to which the gentleman from Columbia [Mr. Gould] refers. We should all be joining the Friends, or becoming Shakers, for the purpose of getting into a society whose discipline forbade bearing arms.

Mr. GOULD—I would merely say that was not the effect during the last war, as I happen to know. I do not think that will be the result.

Mr. BICKFORD—As it now stands, members of every religious denomination in the State, without any exception, if they are individually conscientious in their opposition to bearing arms, are exempt under this provision; but if they belong to a religious denomination whose discipline forbids them to bear arms, there may be a reason why they should be exempt. There is no reason why they should be exempt because in their own consciences they can say, "Although I belong to the Methodist church, whose discipline does not forbid bearing arms, I personally am opposed to bearing arms, having conscientious scruples about it." If they, honestly and sincerely, belong to a denomination whose discipline forbids the bearing of arms, there is some reason for it.

Mr. WEED—I move to amend, by adding in the eleventh line, after the word "therefrom," the words, "in time of peace."

A DELEGATE—That is already in.

Mr. WEED—The gentleman is mistaken. I myself would prefer that the amendment of the gentleman from Schoharie [Mr. Krum] should have been adopted; but as there is no object in compelling Friends to go through with the operations described by the gentleman from Columbia [Mr. Gould], in time of peace, and trying to make them attend general musters, and trainings, and such operations, and, as he says, when needed they did do military service, I have moved the amendment to confine their exemption to times of peace. The Friends in this State, so far as my knowledge of them is concerned, should, and I believe they are willing to take part, in time of war, in defense of the State and of the nation, and they should not be exempt from military duty at that time. They need not bear arms themselves, but they can pay or furnish substitutes. In our section of the State, they certainly take an active part in politics, an active part in the affairs of the town, county and State, and should, when it comes to the time of war, be called upon to aid in the defense of the State and of the nation. For that reason I have moved to insert "in time of peace," after the word "therefrom," in the eleventh line.

The question was put on the amendment of Mr. Weed, and it was declared lost.

Mr. GROSS—I offer the following amendment: Strike out the last four lines of section 2, and insert in their place the words, "and all other exemptions therefrom shall be upon such conditions as may be provided by law."

The question was then put on the amendment of Mr. Gross, and it was declared lost.

Mr. BEADLE—I do not propose to offer any amendment; but I desire to ask the chairman of this committee in what manner this division is to be made between the militia proper and the National Guard? It states in the section that there is to be a division.

Mr. MORRIS—This report, in order that it may be properly understood, is to be taken as a whole; and I think the gentleman will be satisfied, if he takes time to read it through, that the proper discrimination has been made between the National

Guard and the reserve forces. The National Guard is made up of those organizations already formed and equipped, and recognized by law. Should any addition be necessary in future, the Legislature is hereby empowered to make such additions and alterations.

There being no further amendments, the SECRETARY proceeded to read the third section, as follows:

SEC. 3. The Governor shall be commander-in-chief of all the militia forces of the State; he shall appoint the chiefs of the several staff departments, his aids-de-camp and military secretary, all of whom shall hold office during his pleasure, their commissions to expire with the term for which the Governor shall have been elected. The Governor shall nominate, and with the consent of the Senate appoint all general officers.

Mr. STRATTON—I offer the following amendment:

Strike out the words "general officers," in section 3, and insert in lieu thereof the words "major-generals and the commissary-general."

As will appear by the report of the committee, I, as a member of that committee, dissented from that part of the report providing that brigade commanders be appointed by the Governor. I offer this amendment now, in this place, for the purpose of inserting the provision in the Constitution of 1846, as to the appointment of major-generals, as it comes in more properly here than at any other part of the article. I propose, when section 5 is reached, to offer an amendment which will provide for the election of officers as is provided now in the present Constitution. I was, Mr. Chairman, taken somewhat by surprise on coming into the chamber this evening to find that this article was under consideration. From the order of business, I did not think it could be reached for consideration, for at least one week, and I am therefore unprepared for its proper consideration. Aside from this, I had this morning an interview with my colleague [Mr. Evarts], who is desirous to be present when this article is considered, and wishes to be heard upon this part of the article to which I now offer an amendment. He, thinking probably that the article would not be before the Convention this evening, has left, as I understand, for his home. I, therefore, in the discharge of my duty, offer this amendment, and shall urge its adoption. The first division of the National Guard feel a degree of sensitiveness upon this question which probably may not be generally felt. We have, in the first and second divisions of the National Guard of this State the effective arm of the military defense of the State; and when, last winter, it was undertaken to amend the law in the Legislature, under the provision of the Constitution of 1846—which can be done by a two-thirds vote—it was found that the opposition from the first and second divisions was of such great weight that it could not be done; and therefore, in the act passed in the latter part of April by the last Legislature, the first and second divisions were excepted—so, as it stands now, by the Constitution of 1846 and by the law passed last winter, major-generals are appointed by the Governor

and Senate, and brigadier-generals are elected in the first and second divisions, as provided for in the Constitution, while in all the other parts of the State, outside of the first and second divisions, they are appointed. The committee, as I understand, propose this: that all general officers shall be appointed, and then that the clause in the Constitution of 1846 be retained, providing that this mode of appointment or election may be changed whenever the Legislature, by a vote of two-thirds, may so order. It leaves us, therefore, if this article be adopted, as it comes to us in the report of the committee, in this way: that we of the first and second divisions have got to come to the Legislature and get a two-thirds vote in order to be permitted to elect our brigade commanders; whereas, as it stands now, we have that right left to us by the Constitution of 1846 and by the recent action of the people of the State, as expressed by the Legislature of last winter, when they changed the law in the other part of the State, and made a significant exception of these two divisions. The members of the National Guard of the first division are gentlemen who contribute largely of their time and means to keep up that splendid organization in our city of New York, and which has rendered the State and nation such signal service. It is but simple justice to them that they should have the right to say whom they will select as their own brigade commanders. It is a small thing to grant; it will be gross injustice to refuse it. When called into the active service of the country, then, by the very article which the committee now proposes, and in which I concur, all the elections of officers cease, and the Governor has the full right and the power to appoint all commissioned officers. It ought to be abundantly sufficient for all purposes of safety that the Governor is commander-in-chief and has the appointment of all major-generals. No harm can come, therefore, by these military organizations, volunteer in their nature, selecting their own brigade commanders, for they are far better qualified to select their brigade commanders, and if left to the exercise of the right will make better selections of brigade commanders for their respective brigades than by any possibility any Governor would be able to do. I therefore hope that this amendment will prevail.

Mr. MORRIS—This was a point that the committee considered with great attention, and, not satisfied with their own views only on this subject, took especial pains to communicate with officers of distinction of the National Guard, and with the chiefs of the several departments stationed here. That was about the time, recently, when the desire was expressed to have brigadier-generals elected. But in a conversation which I had this very day with the adjutant-general of the State, he informed me that the opposition to the appointment of brigadier-generals in the National Guard had been entirely withdrawn, with the exception of one of the present brigade commanders. Subdivision 2 of section 218 of the addenda reads: "The commander-in-chief shall appoint and commission brigadier-generals of brigades in the several divisions of the State, except in the first and second, whenever vacancies exist, or whenever they may occur." The

law as it now exists, therefore, empowers the Governor to appoint brigade commanders, except in the first and second divisions. It would, of course, be very improper for the Constitution to discriminate between brigades or divisions. The rules should be of a general character, and as this rule of appointment applies to six divisions, and the exception exists only in two, the general rule is to appoint the brigade commanders. There is, however, a saving clause which enables this mode of creating the brigade commanders to be changed, provided the exigencies of the service may warrant such change. I, therefore, hope that this amendment will not prevail.

Mr. FOLGER—I wish to ask a question of the chairman of the committee [Mr. Morris], why the usage in regard to the office of commissary-general, which was, under the present Constitution, to be filled by the recommendation of the Governor, by and with the advice and consent of the Senate, has been changed, and why the change is made that that officer shall give no security hereafter.

Mr. MORRIS—The principle is well recognized in military life that each commanding officer should appoint his aids and staff officers. The association between the Governor and the commissary-general of subsistence is so intimate, that there must be harmony of action. It is therefore regarded as highly desirable that the Governor should appoint this officer. The question concerning security has been left for the Legislature to determine. It was not thought advisable to put more in this article than was deemed absolutely indispensable.

Mr. BALLARD—When this subject was before the Legislature last winter, in the amendments to the militia bill the provision was inserted that the Governor should commission major-generals as well as brigadier-generals. It was opposed, and I think every member from the city of New York was especially opposed to it. It was opposed by members from the interior of the State, on the ground that it was more in accordance with the genius of our government that brigadier-generals should be elected, instead of being appointed, and now, they are elected by the field officers of the regiments. They know best whom they desire for brigadier-generals; and it is a system which has been in operation not only during the existence of the Constitution of 1846, but the Constitution which preceded that, and it has worked well. It has created no disturbance, but it has been in accordance with public sentiment, that brigadier-generals should be elected instead of being appointed. I therefore hope that this article will be confined in its operation, so far as appointments to military offices are concerned, to major-generals and the commissary-general, leaving brigadier-generals to be elected, as they have been heretofore, instead of being appointed. I therefore hope that the amendment of the gentleman from New York [Mr. Stratton] will prevail. The discussion last winter led to a change in the militia bill, so that major-generals are appointed by the Governor, while brigadier-generals are left to be elected by the brigades.

Mr. SEAVER—I agree with the majority of the committee in regard to the manner of appoint-

ing brigade commanders. I hold it to be subversive of military discipline and prejudicial to the service to elect any officer. In time of active service, that method of choosing officers is always as it must necessarily be, abandoned. The article which we submit provides for the giving up of that method in respect to all officers whenever the militia shall be called into active service. It cannot be otherwise. We do not propose to leave it to a colonel of a regiment, or to a civilian, to go through his command electioneering for the purpose of getting promotion to the office of brigadier-general. If it is so left he will often resort to political artifices and chicanery in order to obtain the coveted position; and obtaining it thus he will go into office hampered and trammelled with pledges and obligations to his subordinate officers which will render him inefficient in, if not totally unfit for, the command. I trust, for the good of the service, and in order that the militia may be, what it always should be, the strong right arm of the government whenever the necessities of the State shall demand its services, that this method of appointing the commanding officers of brigades may be adopted here and retained in the organization of the militia of this State.

Mr. STRATTON—But one word in answer to the gentleman from Franklin [Mr. Seaver], who has just taken his seat. He thinks it will be subversive of the discipline of the military if the candidates for the office of brigadier-general are to go through their respective commands electioneering for votes for that office. That it will lead to parties, etc. There is, Mr. Chairman, no politics in our National Guard, and the only way in which politics can be inaugurated in the National Guard is by adopting the report of this committee. Then candidates for the office of brigadier-general will turn politicians, and seek those who are nearest to the Governor in all political relations, in order to get this very appointment, which they could not get by the votes of the officers of their respective brigades. No; it is for the purpose of keeping the National Guard aloof from politics, that I urge this amendment. Let the officers of the National Guard choose their own commanders, and party politics will never mar the order or discipline of our military service.

Mr. T. W. DWIGHT—I rise simply for the purpose of suggesting that the consideration of this section be postponed for the present. This I do out of regard to my friend, Mr. Everts, who is specially intrusted with the advocacy of the interests of the National Guard in the city of New York. It was entirely unexpected to him that this question would come on at this time; therefore I propose that we pass over this section, for the purpose of considering the others, the fourth, fifth, and sixth. I would therefore move that the committee rise and report progress.

The CHAIRMAN—The Chair will state that the section can be passed, and the object can afterward be attained, by moving an amendment generally.

The question was put on the motion of Mr. T. W. Dwight, and it was declared lost.

The question then recurred and was put on the amendment of Mr. Stratton, and it was declared lost, on a division, by a vote of 35 to 35.

SEVERAL DELEGATES—There was no quorum voting.

The CHAIRMAN—The Chair is of opinion that there is a quorum present. Gentlemen will please vote on one side or the other.

Mr. VERPLANK—The usual course in this State has been to elect brigadier-generals by the field officers of the regiments comprising the brigade—that is, the colonels, lieutenant-colonels and majors; and it seems to me that these officers are very proper persons to select the officers to command their brigades. It has been said very properly by the gentleman from New York [Mr. Stratton], that if you desire to keep this arm of the government out of politics, you must adopt this amendment. The committee cannot fail to see that in the several regiments comprising a brigade, the colonels, lieutenant-colonels and majors, will be influenced in all probability by military considerations. I have had the honor to be a militia general for many years in this State, and I have never known politics to enter into elections of militia officers. If you change the mode, and determine that brigadier-generals shall be appointed at Albany by the Governor, we all know how such appointments will be made—active politicians in the several brigade districts make the applications and control the Governor in reference to these appointments. All the appointments made at Albany have been political; and we know that all the appointments to be made here will be political. I therefore hope that the committee will adopt this very proper and very just amendment.

Mr. BALLARD—One word in regard to the section before us. It seems to me that it is unnecessary and impolitic that this Convention should make a change not called for. There has been no murmuring in reference to the Constitution in regard to this point. This matter of the election of brigadier-generals is one about which there is a great deal of sensitiveness wherever a uniformed militia exists, where regiments, brigades and divisions are fully armed, equipped and uniformed, and where they take a local pride in sustaining the militia organization. They have had the privilege of selecting their brigadier-generals. They are elected by their field officers, as they are called; that is, the colonel, lieutenant-colonel and major of each regiment in the brigade. It has been said by the gentleman on the other side of the chamber [Mr. Seaver] that it would leave open a field for electioneering and for all sorts of contrivances to obtain a promotion to the position of brigadier-general. I submit to the consideration of this Convention whether it is true. I submit that the field officers of each regiment composing a brigade are the persons who have the best knowledge in regard to the matter. They have exercised this right for a series of years and it has worked well, and it is not well to change it now in the Constitution that we are framing here, to be submitted to the people next November, and draw down upon it an opposition unnecessary and unwise, and one that had better not be incurred. We had better leave the selection where it now is, with the field officers of the regiments to elect their brigadier-generals, and leave the major-generals and the commissary-gene-

ral to be appointed by the Governor, as the practice now is.

Mr. MORRIS—It seems to me very proper in time of peace, that officers of regiments should be elected by members of regiments, and this article so provides; but a moment's reflection will show the difficulty of making proper elections for brigade commanders throughout the State of New York. The order issued from the adjutant-general's office on the 3d of January, 1867, divides the State of New York into division districts; and those districts again into brigade districts, some of which are composed of three and four counties. For example, the thirteenth brigade district comprises the counties of Fulton, Hamilton, Montgomery, and Schenectady; the eighth brigade district comprises the counties of Greene, Sullivan and Ulster; the tenth, Columbia, Rensselaer and the first assembly district of Washington county. The others are similarly divided. Now, in an election for a brigade commander, the field officers would necessarily have to go to the point of rendezvous at their own expense; it might often occur that only a few would be present, and that those who were would be the especial friends of some candidate for office. There is, therefore, a practical difficulty in this mode. The law as it now stands, and which has been the result of experience, provides that the different brigade commanders shall be appointed by the Governor, except in two divisions. A law was passed last winter making exceptions in the case of the first and second divisions; but this special law is not now so popular as it was; and I understand that only one brigade commander in the first division is in favor of it. Military organizations are very different from other organizations; and it often happens that the man most popular is the man least suited for a high military position. Popularity is gained by oyster suppers, by a certain amount of leniency toward military transgressions, by winking at military neglects; and the man who performs his duty faithfully and exacts the same on the part of others, sometimes renders himself obnoxious by such a course. It is, therefore, important that a general officer should be rendered superior to any such considerations. In an election nobody is responsible. If the Governor appoints a person who is incompetent for office there is then an important official who can be held directly responsible for the action; and he could not do a more unwise thing than to appoint a gentleman as a brigadier-general not fully qualified to perform the duties of that high office. Governors ordinarily are politic men, and they seek to make selections which will give satisfaction, not only to their constituents, but to the military arm of the service. It seems to me, therefore, that the report as it now stands is better than the amendment offered.

Mr. DUGANNE—While I recognize the propriety of the commander-in-chief having all the general appointments in his power, to be exercised at his discretion, in order to preserve the discipline of the National Guard, I still believe that, in accordance with our popular system, we should pay a great deal of attention to the wishes of those who, as citizens, are called upon to constitute the National Guard. I saw in the *Herald* of

to-day that a meeting is called for in New York city, this evening, in order to allow an expression of sentiments on this very subject. The advertisement reads as follows:

"In the report of the Committee on Militia of the Constitutional Convention it is recommended that the elective rights of regimental and field officers as they now exist be withdrawn, and that the brigade commanders shall be appointed by the commander-in-chief. This action is almost identical with that attempted at the last meeting of the Legislature, and which was deemed so obnoxious by the National Guard throughout the State. Every member of the National Guard, whether officer or private, is deeply interested in the preservation of the elective system, and keeping a door open to himself through which he may obtain that reward by promotion at the hands of his fellow guardsmen to which by his soldierly qualities he may be entitled; and it should not be lost sight of that withdrawal of the elective rights from regimental field officers creates a precedent for the same withdrawal being extended throughout the other grades. A meeting of the officers will be held on Tuesday evening, August 27, at 8 o'clock, at the armory of the Twelfth Regiment (by permission), corner Fourth street and Broadway, at which all who are opposed to the above change of system are invited to be present.

(Signed) "LLOYD ASPINWALL,

"Brigadier-General,

"President State Military Association.

"New York, August 24, 1867."

Now, sir, a meeting is called, in order to discuss this subject in New York. This is signed by the President of the State Military Association. I say it is no more than right that we should pass over this section in order to give these gentlemen an opportunity to be heard in their meeting, and also to give their representatives on this floor, on whom they have depended, to state their cause correctly, an opportunity to present their arguments before this Convention; and I hope that this amendment will either be adopted, or that we shall pass over the entire section and give the friends of the amendment an opportunity, at another time, to hear it more fully discussed.

Mr. GREELEY—We have been asked, since the day this Convention first met, to postpone and delay and protract, and now we are within a fortnight of the time we are going to adjourn [laughter], with our work half done, we are asked to wait for gentlemen not here to-night, who want to express their opinion on matters which have been before them ever so long. I do pray this Convention to go forward with this work and the article in some way.

The question was again put on the amendment of Mr. Stratton, and it was declared adopted, by a vote of 50 to 31.

The SECRETARY then proceeded to read the fourth section, as follows:

SEC. 4. General officers shall appoint their own staff officers, who shall hold office during the pleasure of such general officers, but their commissions shall expire with the commissions of the officers appointing them. All officers of the militia shall be commissioned by the Governor, and no

commissioned officer, except those who hold office during the pleasure of the Governor or of general officers, shall be removed from office unless by the Senate, on the recommendation of the Governor, stating the grounds on which such removal is recommended, or by the sentence of a general court-martial. All commissions shall expire in ten years from their dates, except those of the National Guard reserves.

There being no amendment to the fourth section, the SECRETARY proceeded to read the fifth section, as follows:

SEC. 5. Company, commissioned and non-commissioned officers shall be chosen by the written votes of the members of their respective companies; and field officers of regiments and separate battalions by the written votes of the commissioned officers of their respective regiments or separate battalions; but whenever the militia shall be in active service such right of election shall be suspended and all commissioned officers shall be appointed by the Governor, and non-commissioned officers by the regimental or separate battalion commanders, on the recommendation of their company commanders. Regimental and separate battalion commanders shall appoint their own staff officers. All officers not specified in this article shall be appointed as may be prescribed by law; and in case the election and appointment of militia officers in the manner directed by this article shall not be found conducive to the improvement of the militia, the Legislature may change the same by law, provided two-thirds of the members elected to each house shall concur therein.

Mr. STRATTON—I offer an amendment.

The SECRETARY proceeded to read the amendment, as follows:

Strike out section 5 down to and including the word "law," in line thirteen, and insert "militia officers shall be chosen as follows:

Mr. STRATTON—This is the amendment to which I alluded when I proposed the amendment to section 3. It becomes necessary now, as that amendment has been adopted. It is substantially section 2 of the military article of the Convention of 1846.

Mr. MORRIS—If I understand the gentleman from New York [Mr. Stratton], he proposes to omit these words, "But whenever the militia shall be in active service, such right of election shall be suspended, and all commissioned officers shall be appointed by the Governor, and non-commissioned officers by the regimental or separate battalion commanders on the recommendation of their own commanders." Do you propose to strike that out?

Mr. STRATTON—I propose to strike out all of section five, from the beginning down to and including the word "law," in line thirteen of that section, and insert the amendment which I proposed. I have, however, no objection to the provision for the appointment of officers whenever the militia shall be in active service.

Mr. C. C. DWIGHT—I propose, as a substitute for the amendment offered by the gentleman from New York [Mr. Stratton], to insert after the word "battalion," in the fifth line, the words, "and brigadier-generals by the commissioned officers of their respective brigades."

Mr. STRATTON—I accept the amendment.

Mr. MORRIS—I suggest to the gentleman from Cayuga [Mr. C. C. Dwight] that he say "field officers," as in the present Constitution.

Mr. C. C. DWIGHT—It should be "field officers of their respective brigades."

The question was then put on the amendment of Mr. Stratton, as amended on the suggestion of Mr. C. C. Dwight, and it was declared carried.

There being no further amendments to the fifth section, the SECRETARY proceeded to read the sixth section, as follows:

SEC. 6. In the organization of the National Guard, the Legislature shall provide for including therein a list of reserve officers to be composed of officers of the National Guard, of not less than ten years' service in the same grade, and of officers honorably discharged from the volunteer service of the United States, who may be citizens of this State. They may, upon application, be commissioned by the Governor, with rank equal to the highest held by them, by brevet or otherwise, in the National Guard or United States volunteers, and they may be assigned to such service, and be entitled to such privileges and exemptions as the Legislature shall by law provide.

Mr. BICKFORD—I offer the following amendment:

Add at the end of section 6 the words "except exemption from taxation on property owned or possessed by them."

There is a great deal of complaint among the people that officers and members of the National Guard are exempted to a considerable amount of property from taxation. I am aware that exemption depends at present upon the action of the Legislature, it being not expressly provided for in the Constitution, at least such is my impression. This proposed article of the Constitution looks a little toward the exemption of a certain class of officers from taxation. I think the principle is wholly wrong, and that the people are very averse to exempting members of the National Guard from taxation for the reasons simply that they are members of the National Guard. The principle is wrong. All the property of all the citizens of the State should be liable to taxation, without any exemption whatever. If it is desired to pay members of the National Guard, either officers or privates, any or all of them, let them be paid, and let all the property of the State be taxed. For instance, a member of an artillery company is exempt to the amount of one thousand dollars, when the property is not assessed to over two-fifths of its real value. This is felt by the people to be a very great burden and grievance. A member of a cavalry company is also exempted a thousand dollars; the members of an infantry company are exempted to the amount of five hundred dollars on their assessed valuation. I am very desirous that there should not be incorporated in the Constitution anything which looks like exemption or which may authorize an exemption of any portion of the National Guard from taxation on their property. I hope, therefore, that this amendment may prevail.

Mr. AXTELL—I quite agree with the gentle-

man from Jefferson [Mr. Bickford] in regard to exemptions. I do not think any class of persons should be exempted or that their property should be exempted from taxation; but this I think is not the place in which to forbid that exemption; therefore I hope the gentleman will withdraw his amendment. It cannot be reached unless in its appropriate place.

Mr. BICKFORD—I would inquire where the proper place would be? Here is where I find it occurring. Here is the place where the plaster should be made to fit the sore.

Mr. AXTELL—The Committee on the Powers and Duties of the Legislature has reported a section which covers this case.

Mr. BICKFORD—Why not incorporate it here? Here is the place to provide the remedy.

The question was then put on the amendment of Mr. Bickford, and it was declared lost.

Mr. LANDON—I offer a substitute for the whole article.

Mr. RUMSEY—I have an amendment which I desire to offer to this section before a substitute is offered for the article.

The CHAIRMAN—The amendment will be received.

Mr. RUMSEY—I move to strike out the last two lines of this section. I make this motion for the reason that those two lines are entirely useless there. The Legislature, unless they are restricted from exercising the power given them in these two lines, have the right to exercise it if they choose to do so. They retain all legislative power not expressly taken from them.

Mr. C. C. DWIGHT—I think the object of this section, or of this clause, is entirely misconceived by the gentleman who offered this amendment [Mr. Rumsey] as well as the gentleman from Jefferson [Mr. Bickford]. There is no such "African in the hedge," as the gentleman seems to think. The only intention of this clause is to authorize the Legislature, in organizing this reserve force, to grant to the officers thus retired from active service such privileges in respect to the honors and dignities to which they should be entitled, and the badges and insignia which they should be entitled to wear, and such exemptions from active service as they might prescribe by law.

Mr. RUMSEY—Will the gentleman allow me to ask him a question? Is there any doubt that the Legislature have the right to do that unless the Constitution takes away from them the power to do it? There is no use in giving it to them. It is an inherent right in the Legislature, arising from the fact that they have all legislative power.

Mr. C. C. DWIGHT—Then this provision can do no hurt. If the gentleman will read the whole article he will see the point which he does not evidently now discover. It is provided by a previous section of this article that no commission in active service shall last for more than ten years; that every officer shall go out of commission in the active force at the end of ten years; and this section is intended to provide a retired list, as it is called in the regular army of the United States, upon which the names of officers thus retired from active service may be borne as honorably as on

the rolls of the active service of the State, and this clause is intended as a very harmless permission to the Legislature to give to the officers thus retired such privileges in respect to titles, honors and dignities, and such exemptions from active service, as they may by law provide. Another object of this section is to have a force of experienced officers always at hand who may be called into active service to meet any emergency or exigency, but who shall, in ordinary circumstances, be exempted from active service.

Mr. BICKFORD—It is, indeed, very possible that this provision might be construed as the gentleman from Cayuga [Mr. C. C. Dwight] has interpreted it; but it is certainly capable of a very different construction. I certainly did not understand it as he explained it, and I am certain it would not strike the common mass of minds in the light in which he puts it. If he intended merely that they should be exempted from active service, it would be very proper, but as it stands now, it is such privileges and exemptions as the Legislature shall provide.

Mr. C. C. DWIGHT—Will the gentleman give way a moment? A delegate has suggested an amendment which I have no objection to, and which I presume no other member of the committee will have any objection to, which I think will avoid all ambiguity. It is to insert the word "military" before the words "privileges and exemptions," in the last line.

Mr. BICKFORD—Would the word "military" apply to exemptions as well as privileges?

Mr. C. C. DWIGHT—Yes, sir. I offer it as an amendment.

Mr. FERRY—I would ask the gentleman from Cayuga [Mr. C. C. Dwight], in order to avoid all doubt and criticism, as he proposes to amend it, and insert after the word "exemption" the words "from service" there would then be no ambiguity about it?

The question was then put on the amendment of Mr. C. C. Dwight, and it was declared carried.

Mr. VERPLANCK—I am averse to occupying the attention of the committee so often, but I move, as this is a military question and must be fought through, to amend the second section by inserting after the words "its numbers shall be fixed by law," the words "but shall not exceed thirty-six thousand in time of peace."

The CHAIRMAN—The Chair will suggest that the amendment of the gentleman from Steuben [Mr. Rumsey] is now pending.

The question was then put on the amendment of Mr. Rumsey, and it was declared lost.

Mr. VERPLANCK—I propose to amend the second section by inserting after the words in the third line, "its numbers shall be fixed by law," the words "but shall not exceed thirty-six thousand in time of peace." When I received the communication from General Rogers, which I have before alluded to, and which proposed 25,000 as the number of the National Guard, to be armed and equipped at the expense of the State, I submitted it to the chairman of this committee, and he told me he would consult the adjutant-general on the subject. He afterward informed me he had consulted the adjutant-general, and that the

adjutant-general thought twenty-five thousand was not enough, but that the number should be thirty thousand, and I understood the chairman of this committee to say he would be satisfied to fix this number at thirty thousand, so I rested in peace and wrote to my friend General Rogers that the adjutant-general and the chairman of this committee were satisfied with the number of thirty thousand. I was quite surprised this evening to find it was left, by the report of the standing committee, to the Legislature, to fix the number. I have no doubt, if I had written to General Rogers, who had this matter in charge, so far as the west is concerned, that there was difficulty or doubt about this question, I should have received further communication and information from him. The chairman of the committee says to-night he did think that would be a proper thing to do, but that he had since changed his mind. It, of course, is a surprise to me and a surprise to the gallant general whom I represent in this Convention. I know it is a hard thing to contend with the chairman of this committee. His devotion to the country and to her interest during the war has made him so popular that his report will probably be carried through the committee. We have sixty counties in the State and thirty-six thousand will give to each county six hundred men, quite as many men as the State of New York should arm and equip for the purpose proposed. The number enrolled in the cities of New York and Brooklyn at the present time in the National Guard is about sixteen thousand, and giving to New York and Brooklyn all the men they have enrolled it would leave twenty thousand for the balance of the State, which would give to each county about three hundred and fifty men to be armed, equipped and disciplined. I submit that this number is quite sufficient, that the expense will be large enough with this number of men, and I hope that if it is left to the Legislature to fix the number the Convention will limit the number to thirty-six thousand men in time of peace.

Mr. MORRIS.—When the distinguished gentleman [Mr. Verplanck] commenced his remarks I was about to rise to a point of order, for I understood it had already been decided by the committee to leave the number to be fixed by the Legislature, but after the handsome compliment he has just paid me it strikes me it would be very improper to rise to such a point. [Laughter.] The question was then put on the amendment of Mr. Verplanck, and it was declared lost.

Mr. BALLARD—I move that the committee do now rise and report the article to the Convention and recommend its adoption.

Mr. LANDON—I now offer a substitute for the entire article, which I would like to have submitted to the committee.

The SECRETARY proceeded to read the substitute of Mr. Landon, as follows:

"The Legislature shall provide by law for the designation, enrollment, organization, equipment, and discipline of the militia forces of the State."

Mr. LANDON—I am not a military man but I offer this substitute for two reasons. First, because I like its brevity, and second, its flexibility. The article reported by the committee consists of details and would be very proper were this

body a Legislature engaged in the perfection of a military bill. If the Legislature should make a mistake in the matter of details, the errors of one year might be corrected by the amendments of the next; but if we insert these details in the Constitution, and if it is adopted, they may remain unchangeable for the next twenty years, despite the demands of time and the suggestions of experience; but with this simple provision, whatever experience may demand, can easily be supplied by the Legislature.

The question was then put on the amendment of Mr. Landon, and it was declared lost.

Mr. HADLEY—I offer an amendment to the third section. It is to insert after the the third section the language of the Constitution of 1846, requiring the commissary-general to give security.

The SECRETARY proceeded to read the amendment of Mr. Hadley as follows:

"The commissary-general shall give security for the faithful execution of the duties of his office in such manner and amount as shall be prescribed by law."

Mr. HADLEY—I have heard no good reason advanced, and, in fact, I did not hear the answer made by the chairman of the committee [Mr. Morris], who reported this article, to the question that was put to him. I find that language in the Constitution of 1846. It has been there for twenty years, during war and during peace, and I know of no good reason why it should not remain there still. A large amount of property passes through the hands of the commissary-general, and it seems to me entirely proper that he should give security.

The question was then put on the amendment of Mr. Hadley, and it was declared carried.

Mr. BICKFORD—I offer this amendment as an additional section.

The SECRETARY proceeded to read the amendment as follows:

Sec. 7. The Legislature may provide for paying the National Guard of the State while engaged in active service or in drilling; but no person shall be exempted from taxation by reason of his belonging to the National Guard.

Mr. MORRIS.—It seems to me, Mr. Chairman, this is not a matter pertinent to the Constitution, and that it should be left to the Legislature. The law of the State provides amply for all such matters.

The question was then put on the amendment of Mr. Bickford, and it was declared lost.

Mr. SEAVER—I would like to suggest a verbal alteration here, merely as regards the wording of section 5. It is to strike out the word "company," in the first line, and insert the word "the," and after the word "officers," in the second line, insert the words "of companies," so that it will read, "The commissioned and non-commissioned officers of companies."

The CHAIRMAN.—The amendment will be made unless there be objection.

Mr. BALLARD—I move that the committee do now rise, and report the article to the Convention and recommend its adoption.

The question was put on the motion of Mr. Ballard, and it was declared carried.

Whereupon, the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. BALLARD, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Militia and Military Officers, and had gone through with the same, and made sundry amendments thereto, and had instructed their chairman to report the article to the Convention and recommend its adoption.

Mr. LANDON—I offer the substitute for the entire article which I offered in the Committee of the Whole.

The PRESIDENT—The Secretary will refer to it.

Mr. GREELEY—I move the previous question on the adoption of the article.

Mr. VERPLANCK—What will be the effect of that?

The PRESIDENT—It cuts off all other amendments except the one under consideration.

Mr. VERPLANCK—I desire to renew my amendment, which I consider an important one, and which is so considered by gentlemen throughout the State.

The question was put on the motion of Mr. Greeley and it was declared lost, on a division, by a vote of 30 to 52.

The PRESIDENT announced the question to be on the adoption of the substitute offered by Mr. Landon.

Mr. LANDON—Upon that I ask the ayes and noes.

A sufficient number seconding the call the ayes and noes were ordered.

The question was then put on the substitute of Mr. Landon and it was declared lost, by the following vote:

Ayes—Messrs. Andrews, Beckwith, Bickford, E. P. Brooks, J. Brooks, Cooke, Corbett, Endress, Ferry, Folger, Fowler, Garvin, Gerry, Grant, Greeley, Hand, Hardenburgh, Hiscock, Hitchcock, Kernan, Krum, Landon, M. H. Lawrence, Lee, Ludington, Merwin, Murphy, A. J. Parker, Potter, Rathbun, Robertson, Schell, Schoonmaker, Sheldon, Spencer, Tappen, Weed, Young—38.

Noes—Messrs. A. F. Allen, N. M. Allen, Archer, Axtell, Ballard, Barker, Barto, Beadle, Bowen, E. Brooks, Cheritree, Church, Clinton, Cochran, Conger, Curtis, Duganne, C. C. Dwight, Farnum, Field, Fuller, Gould, Graves, Hadley, Hammond, Harris, Houston, Kinney, Lapham, A. Lawrence, Mattice, McDonald, Morris, Opyke, Paige, President, Prindle, Prosser, Reynolds, Rumsey, Seaver, Stratton, Strong, Tilden, S. Townsend, Van Campen, Van Cott, Verplanck, Wales, Wickham, Williams—51.

Mr. ROBERTSON—I move that the Convention disagree with the report of the committee, so far as to strike out of the second section, in the ninth and tenth lines, the words, "of any religious denomination whatever." I would not press this now, being desirous at all times to spare the time of the house, particularly at so late an hour this evening, did I not find out in the course of the discussion previously had, when this subject was discussed in the Committee of the Whole, that the amendment which I proposed then, and which I now renew, strikes at a greater

error in the Constitution of this State than I had at first supposed. I had at first supposed that that section merely went so far as to relieve *individual* who had scruples of conscience against bearing arms from serving their country in a military capacity. I find from the discussion of gentlemen here, that it is supposed, that it aims at the religious liberty of this State, and gives to certain religious denominations, preferences which are not accorded to others, so that a religious denomination which shall assume as a tenet something which relates to the question of bearing arms, shall have a preference over all other denominations in the State, so that while individuals who entertain conscientious scruples, and do not belong to such religious denominations, shall be deprived of the privilege which is granted by this section, and it shall be only accorded to those who belong to such religious denominations. I think that distinction palpably gives to such religious denominations the benefit of having accessions to their numbers who are desirous of escaping military duty. I mean to say nothing of the tenets of the two sects which have been brought up as examples, the Moravians and the Society of Friends. I mean to say nothing of the heroism, if it may be so called, of those who have endured the persecution of the tax gatherer and have been incarcerated in order to avoid military duty. But I mean to say that individuals, who belong to every religious denomination or to none, have an equal right to be exempted from bearing arms if they entertain conscientious scruples as if they belonged to the Moravian Brethren or the Society of Friends. I ask why the Baptists, or the Presbyterians, or the Episcopalians, or the Catholics, or even those who have not attached themselves to any religious denomination whatever, are not equally entitled to this exemption with the Shakers, or any other denomination which chooses to embody among their tenets that of hostility to encountering the enemies of their country in battle, and I therefore persevere in offering this amendment, because I consider it absolutely essential to strike out from our constitution everything which appears to have the slightest appearance of prescribing religious tests or conferring religious privileges, and I therefore propose that they be struck out, and I ask the ayes and noes upon it.

Mr. GREELEY—I move the previous question on the article to take effect after this amendment.

The CHAIRMAN—The motion is not in order.

The question was then put on the amendment of Mr. Robertson, and it was declared lost by the following vote:

Ayes—Messrs. Bickford, E. Brooks, J. Brooks, Chesebro, Curtis, Duganne, Endress, Farnum, Field, Fowler, Garvin, Gerry, Graves, Greeley, Hand, Hardenburgh, Hitchcock, Kinney, M. H. Lawrence, Opyke, President, Prosser, Rathbun, Reynolds, Robertson, Schell, Sheldon, Spencer, Stratton, Tappen, Tilden, Van Campen, Verplanck, Weed, Young—36.

Noes—Messrs. A. F. Allen, N. M. Allen, Andrews, Archer, Axtell, Ballard, Barker, Barto, Beadle, Beckwith, Bell, Bowen, E. P. Brooks, Cheritree, Clinton, Cochran, Conger, Cooke, Corbett, C. C. Dwight, Ferry, Folger, Gould, Grant,

Hadley, Hammond, Hiscock, Houston, Kernan, Krum, Landon, Lapham, A. Lawrence, Lee, Ludington, Mattice, McDonald, Merwin, Morris, Paige, A. J. Parker, Potter, Prindle, Rumsey, Schoonmaker, Seaver, Strong, S. Townsend, Van Cott, Wales, Wickham, Williams—52.

Mr. GREELEY—I move the previous question. We shall be without a quorum in a few moments.

Mr. VERPLANCK—I renew the amendment I had the honor to move, in Committee to insert after the words "fixed by law" the words "not to exceed thirty-six thousand in time of peace."

Mr. RUMSEY—I move the previous question on the whole article.

The question was then put on the motion of Mr. Rumsey and it was declared carried.

The PRESIDENT announced the question on the amendment of Mr. Verplanck.

Mr. VERPLANCK—I call for the ayes and noes.

A sufficient number having seconded the call, the ayes and noes were ordered.

The question was then put on the amendment of Mr. Verplanck, and it was declared lost, by the following vote:

Ayes—Messrs. A. F. Allen, Archer, Axtell, Bickford, E. Brooks, E. P. Brooks, J. Brooks, Chesebro, Church, Farnum, Field, Folger, Garvin, Gerry, Greeley, Hand, Hardenburgh, Kernan, Krum, Lapham, M. H. Lawrence, Lee, Ludington, McDonald, Potter, Prosser, Rathbun, Robertson, Schell, Schoonmaker, Tappen, Verplanck, Weed, Wickham, Young—35.

Noes—Messrs. N. M. Allen, Andrews, Ballard, Barker, Barto, Beadle, Beckwith, Bergen, Bowen, Cheritree, Clinton, Cochran, Conger, Cooke, Corbett, Curtis, Duganne, C. C. Dwight, Endress, Ferry, Fowler, Grant, Graves, Hadley, Hammond, Hiscock, Hitchcock, Houston, Kinney, Landon, A. Lawrence, Mattice, Merwin, Morris, Opydyke, Paige, A. J. Parker, President, Prindle, Reynolds, Rumsey, Seaver, Spencer, Stratton, Strong, Tilden, S. Townsend, Van Campen, Van Cott, Wales, Williams—53.

The question was then put on the article as amended, and it was declared adopted.

The PRESIDENT—The article is adopted and referred to the Select Committee on Revision.

Mr. BICKFORD—Is it not in order to move an additional section?

The PRESIDENT—It is not.

Mr. AXTELL—I move that this Convention do now adjourn.

The question was put on the motion of Mr. Axtell, and it was declared carried.

So the Convention adjourned.

WEDNESDAY, August 28, 1867.

The Convention met at 10 o'clock A. M.

Prayer was offered by Rev. E. B. RUSSELL.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. WEED—I ask leave of absence for Mr. Carpenter, of Dutchess, for the remainder of this week, on account of sickness.

There being no objection, leave was granted.

Mr. HAND—I ask an indefinite leave of absence for Mr. Corning, who is unable to get out of his room on account of sickness.

There being no objection, leave was granted.

Mr. BELL presented the petition of thirty electors of Pittsford, in the county of Monroe, for an amendment to prohibit the sale of intoxicating liquors as a beverage.

Which was referred to the Committee on Adulterated Liquors.

Mr. MERRILL presented the petition of sixty-one citizens of Wyoming county praying that the Legislature may be prohibited from donating money for sectarian purposes.

Which was referred to the Committee of the Whole.

Mr. WAKEMAN presented the petition of sundry citizens of Genesee county praying that provision may be made by this Convention whereby the corporation known by the name of "The Regents of the University of the State" shall cease to exist.

Which was referred to the Committee on Education.

Mr. FOWLER presented two petitions against sectarian and charitable donations by the Legislature.

Which were referred to the Committee of the Whole.

The PRESIDENT presented the petition of C. T. Miller and others in relation to the observance of the Sabbath.

Which was referred to the Committee of the Whole.

Mr. ROBERTSON, from the Committee on the Powers and Duties of the Legislature, submitted a minority report, as follows:

The undersigned do not assent to the section of the report which prohibits the donation of moneys for charitable purposes, by the legislative and local authorities, as framed in the report. The memorials which have been presented to the Convention, seem to indicate that the crying evil sought to be remedied is the donation of moneys for sectarian purposes, by means of which, it is charged, unjust discriminations are made. If such complaints be well founded, the causes thereof should be removed, but the sections proposed by the majority of the committee in reference to this subject, seem to us too broad and sweeping. The projects of biennial sessions of the Legislature, and of the establishment of a court of claims, are so new and have been so little the subject of discussion, that at present we are unprepared to decide upon their expediency or recommend their adoption. We are willing to submit those matters to the consideration of the Convention, reserving the privilege of taking such action in regard thereto as we may think proper. The undersigned also object to that section which provides for the formation of corporations except by general law. Many objections to this provision will doubtless suggest themselves to the minds of members of the Convention. We think, also, that as there are a large number of corporations created by special charter, and having special powers, the clause prohibiting the Legislature from altering or extending the powers of corporations except by general law, might operate prejudicially upon, and ought not to be applied to such corporations.

The undersigned do not concur in the reasons

given by the majority of the committee for refusing to embrace in their report any provisions bearing on the subject of legislative interference with the government of cities, namely, that in their judgment the committee had no jurisdiction or cognizance of such matters. The undersigned do not admit the force of the objection. Resolutions bearing upon this very subject have been referred by the Convention to this committee, and have been considered by them. We think that the subject is within our control, and that it is our duty to call the attention of the Convention to it. The undersigned are in favor of inserting in the Constitution clauses which shall prohibit the Legislature from again evading the clear provision of the Constitution, and usurping authority not designed to be conferred upon it. We recommend the adoption of provisions which shall prevent the Legislature from altering the civil divisions of the State, and from uniting one division of the State with another, or part of another, thereby creating an anomalous district or division, and thus securing to itself the power of creating new offices not known to the Constitution, and of selecting the individuals to fill such offices, at the expense of the rights of the people. We object to the exercise by the Legislature of the power to create commissions and local boards to exercise municipal powers within the territorial limits of any of the cities of the State, or to confer the appointment of the officers to fill such boards and commissions upon the Executive of the State. These boards and commissions are not necessary, are not required, and are adverse to the interests of the localities over which they are created; they are expensive, and largely increase taxation; they are made the instruments of advancing partisan and political interests, and are objectionable for many other reasons.

If these or similar local boards and commissions are to be retained, they should be so only upon the condition that the officers thereof shall be elected by the people, or appointed by the elected authorities of the city within which their duties and powers are to be exercised and performed. It may not be out of place to call the attention of the Convention to some facts connected with the history of the legislation of the State on the subject above referred to. In 1857, the Legislature, by act of April 15th of that year, created what is now known as the board of metropolitan police, and placed the power of selecting the commissioners in the hands of the Executive of the State. The question of the constitutionality of the law came before the court of appeals, in the case of the People, etc., against Draper and others, which will be found reported in 15 New York Reports, page 538. The ground of unconstitutionality claimed was, that the existing Constitution provided that all city or county officers should be elected by the people of the city or county, or appointed by the authorities thereof as the Legislature might declare or direct, and that these commissioners so created were in fact city or county officers, and that if not, then that the act was unconstitutional for the reason that the Legislature had no right to create new and anomalous divisions of the State. That court held that there was nothing in the Constitution which prevented the Legislature

from uniting a city, county, town or village with some other of such divisions, or part or parts of such divisions, and that a new district would thereby be created, the officers of which would be neither county, city, town or village officers, but would be officers of such new districts, and therefore could be elected or appointed in such manner as the Legislature should direct.

It will thus be seen that if the Legislature add any territory, no matter how small, to the territory of any city, county, town or village, they create a new district, and that by this device the Legislature may deprive the people of the original locality of the power of electing such officers or of having them appointed by the local authorities thereof. In the exercise of this jurisdiction the Legislature has, since 1857, united different counties or parts of counties in the State, and exercise over these new districts jurisdiction similar to that exercised over the people of the city of New York, under the act of 1857, above referred to, as will be seen by reference to the act. In order to show that the institution of this metropolitan police board in the city of New York has largely increased the taxation in the city of New York, we refer to the following statement which proves that for nine years preceding 1857, the gross amount paid by that city for police purposes amounted to \$5,980,000, while the amount paid for the nine years during which such board has been in operation in said city is \$15,723,618.26; showing that while before the act of 1857, the average annual expense was \$644,444.44, since that time the average annual expense has been \$1,747,068.69.

	City Authorities.		Present Commissioners.
1849,...	\$479,000 00	1858,...	\$988,548 60
1850,.....	492,000 00	1859,....	1,242,739 00
1851,.....	510,000 00	1860,....	1,891,125 00
1852,.....	540,000 00	1861,....	1,718,790 00
1853,.....	615,000 00	1862,....	1,764,712 00
1854,.....	872,000 00	1863,....	1,766,422 00
1855,.....	819,000 00	1864,....	1,836,120 27
1856,.....	828,000 00	1865,....	2,524,05 6 00
1857,.....	825,000 00	1866,....	2,601,054 99
	\$5,980,000 00		\$15,723,618 26

Among the reasons given for taking from the city the control of its police, was its alleged partisan character, and the great expense of its maintenance. Before 1857, the police department was controlled by three commissioners elected by the people of the city, and accountable to them for their actions, viz.: the mayor, recorder and city judge, and the expense never, in any one year, exceeded \$872,000. Now it is controlled by a bitter partisan commission, appointed by the Governor and Senate, totally irresponsible to the people for its acts, and the annual expense of which for the year 1866, was \$2,601,054.99, which is \$631,390.77 more than the amount required to be raised by taxation for the support of the entire city government for the same year, and that too in the face of the fact that the population of the city had in the preceding five years, according to the Depew census, decreased 87,283. This mere statement will be sufficient to show whether the reasons

urged for this unjust and tyrannical action toward the city of New York, were well founded. Were time afforded, all the other reasons alleged for depriving the people of the city of New York of the power of regulating its own police, could be shown to be unfounded and mere pretenses. It may not be known to the Convention to what extent the Legislature has exercised the power of governing the city of New York by means of local boards of commissioners, whose members and officers are elected by the Legislature and who are not responsible to the people for their conduct. For the purpose of calling the attention of the Convention to this important subject, and of showing how unfairly the city of New York is treated, we refer to the following facts: the board of supervisors of the city and county of New York is nothing more nor less than a State commission, composed of members half of whom are elected by the people and the other half of whom are appointed by the mayor, after the useless formality of receiving the vote of a minority of the electors of the county, no matter how small the minority may be. Such a singular anomaly under a republican form of government, as a legislative body half elected and half appointed, we will venture to say was never dreamed of by the founders of our system of government.

In addition to the commissioners of police and excise, there are the following different commissioners and boards exercising jurisdiction within the limits of the city:

The commissioners of charities and corrections. Act April 17, 1860.

The Central park commissioners. Act April 17, 1857.

The fire department commissioners. Act 1865, March 3.

Commissioners of pilots. Act 1853, June 28. And harbor commissioners. Act March 30, 1855.

Harlem bridge commissioners. 1857, April 17; 1858, April 16; 1861, chapter 291.

Commissioners for new court-house. 1861 April 10.

Commissioners for laying out the city north of 155th street.

Port wardens. 1857, April 14.

Commissioners for erecting a new market.

Commissioners for cleaning streets.

Commissioners for improving Broadway. Act 1866, chapter 86.

It only remains to create one or two more boards of commissions, as for instance, a wharf, pier and slip commission; a new market commission and a ferry commission, in order totally to disfranchise the people of that city, so far as the government and management of their own affairs are concerned.

The Legislature of 1866, by act, chapter 867 created a commission for the improvement of Broadway, composed of the members of the Croton aqueduct board, and two private citizens selected by the Governor, which commission was authorized to incur expenses and make contracts, for which the city was made liable.

The fourth section of that act gave the said commissioners the power of rejecting any or all

of the plans or proposals submitted to them, and under the powers thus conferred, the commission made a contract to perform the proposed work for the sum of \$372,793, to which was added the small sum of \$18,024 for salaries for surveyor, clerk and inspector, advertising, printing, stationery, counsel fees and contingencies, making a total of the small sum of \$390,817 for completing the work. The city authorities have, as we understand, repeatedly asked the Legislature to sanction an appropriation for the performance of this identical work, of the sum of \$100,000, which amount was based upon estimates made by competent persons of its probable cost; and while the Legislature refused to sanction such appropriation, it now, by the fifth section of the act referred to, which is mandatory in its character, compels the city to raise and pay the sum of \$390,817, of which, as has been shown, near \$20,000 is for the salaries and expenses above mentioned.

We have already alluded to the fact that by reason of the action of the Legislature complained of, the taxes paid by the people of the city have been greatly increased, to what extent we hope will be satisfactorily exhibited by the schedules hereafter given. We desire, however, to call attention to the fact that of the entire amount required to be raised for the annual support of the government of the city of New York, more than three-quarters is disbursed by persons appointed by the State, who are in no way responsible to the people for the amount they expend, or the manner of the expenditure. To prove the assertion we submit the following statement, based upon the comptroller's estimate for 1867:

Expenditures by State Commissions or Boards.

Department of charities and correction.....	\$965,287 51
Department of metropolitan police.....	73,000 00
Board of education.....	2,532,000 00
Street cleaning commission.....	504,251 86
Commission for repaving Broadway.....	390,817 00
Metropolitan board of health.....	40,500 00
Metropolitan fire department.....	700,000 00
Central park, maintenance and government.....	215,000 00
Central park (payment of interest).....	605,321 24

Total by commissions on city account..... \$6 016,157 61

To this amount, imposed by the State upon the people of this city on city account, and expended by commissions of its own creation, the following additional sums, imposed and expended in a similar manner on county and other accounts is added, in order to exhibit the entire sum taxed by the State upon the city and county and expended through the agency of commissions:

Metropolitan police.....	\$2,601,054 99
Metropolitan board of health.....	74,876 47
College of New York.....	114,000 00
Asylums, etc. (by State laws).....	176,466 00
	<hr/> 2,966,397 46

Total by State commissions, etc., for city and county.....	\$8,982,555 07
General expenses of board of supervisors.....	1,189,098 00
Interest on county debt.....	761,408 24

Total by State commissions and county legislature.....	\$10,933,059 31
Add city portion of State tax.....	3,375,227 97

Total for 1867, disbursed by the State and taxed upon the people of this city..... \$14,308,286 28

Expenditures by City Government.

The disbursements of the city, over which the local authorities exercise control, are as follows:

Legislative department.....	\$385,016 65
Mayoralty.....	47,500 00
Finance department.....	462,000 00

Street department.....	1,886,675 00
Croton aqueduct department.....	726,892 00
Law department.....	70,800 00
Board of assessors.....	7,200 56
Board of revision and correction of assess- ment.....	3,000 00
City courts.....	191,080 58
Total expenditures under control of common council.....	\$3,769,664 22
Interest on city debt (less on Central park).....	692,560 00
Redemption of city debt in 1867.....	692,420 69
	\$5,058,644 91
Less receipts of the corporation.....	1,800,000 00
	\$3,258,644 91
Total for expenses of the city.....	\$1,969,664 22
To which add interest on city debt and redemp- tion of the portion of the debt falling due in 1867, payable by taxation in 1867.....	1,315,980 69
Making the total disbursement on city account.....	\$3,285,644 91
Total expenses of the city government, exclu- sive of payment of interest on city debt and redemption of principal, payable in 1867.....	\$3,769,664 22
Deduct income of corporation.....	1,800,000 00
Total expenses of the city government for 1867, taxed upon the people.....	\$1,969,664 22

By including the county expenditure for the year 1867, as above, the amount to be expended in the city and county by State agencies during the year 1867 will be \$10,933,058.31; or, if we deduct the amount directly under the control of the county government and include only the amount expended by boards or commissions appointed by the Governor and Senate, then the amount will be \$8,982,555.07, to which add the amount of State tax, viz.: \$3,375,239.07, and it will be seen that the whole amount of tax levied on the people of this city and disbursed by and for the State, independent of either the city or county government, is \$12,357,797.04.

To recapitulate, and in order more clearly to put the case so that it may the more readily be understood, the following aggregates are presented.

Whole amount of money required for city gov- ernment for 1867.....	\$3,769,664 22
Whole amount of money required for State com- missions for 1867.....	8,982,555 07
Whole amount of money required for State tax for 1867.....	3,375,237 97
Whole amount of money required for county government (including interest).....	1,960,503 24
Whole amount of money required for redemp- tion of city debt.....	692,420 69
Whole amount of money required for interest on city debt.....	623,560 00
Total for State, city, county and commissions..	\$19,838,941 19
Deduct income of corporation.....	1,800,000 00
Total required to be raised by taxation.....	\$17,593,941 19
The entire sum required for the support and maintenance of the city government for the present year (exclusive of interest on and redemption of the city debt for the year 1867) as above is.....	\$3,769,664 22
Less income of the city as above.....	1,800,000 00
Total taxation required for support of city gov- ernment for 1867 (exclusive of debts and interest).....	\$1,969,664 22

Or, in other words, of \$17,593,941.19 to be raised by tax for the present year, the city government is responsible directly only for the expenditure of \$1,969,664.22; or, if we include the amount required for the payment of interest on the city debt, and the redemption of the amount of principal falling due this year, the entire amount that will be required is \$3,285,644.91.

The moneys expended by the county govern-
ment are necessarily included in the foregoing
comparison. It is unavoidable, in order to arrive
at an easy comprehension of the case, and to
show the manner of the expenditure of all the
moneys of the people of the city realized by taxa-
tion. But one valuation of their real and per-
sonal property is made for State, city and county
purposes, upon which to base the rate of taxa-
tion, and but one rate is fixed for the imposition
of the tax for the support and maintenance of the
city and county governments, and the payment
of our portion of the State tax; a fact that leads
to the misapprehension that the city government
is responsible for the whole amount of money
taxed upon the people. The injustice thus done
the city government must be admitted by every
candid person acquainted with these facts, as it is
above clearly shown that the government of the
city, so far as it is administered by the direct
representatives of the people in the common
council, through the legislative, street, Croton
aqueduct, finance and law departments and the
city courts of judiciary, will be supported for the
present year for the sum of \$3,769,664.22, of
which only the sum of \$1,969,664.22 is raised by
taxation, while the amount that will be required
for State purposes, and the support of that part
of the government intrusted to commissioners
appointed by the State, including the amount ex-
pended by the board of supervisors, will be
\$14,308,296.28. As no estimate has been sub-
mitted by the comptroller of the city for the new
county court-house and Harlem bridge, in all
probability the Legislature will add the amount
asked for by these commissions, which will in-
crease the last mentioned amount to at least
\$15,000,000.

To simplify the case still more, and to give it
so that the most limited understanding cannot fail
to comprehend it at a glance, it is only necessary to
state that the above figures show that for EVERY
DOLLAR raised by tax and disbursed by the city
government, and for which it is directly respon-
sible to the people, more than SEVEN DOLLARS is
expended by State agencies, subject to no control
whatever, and for the expenditure of which State
disbursing officers are relieved from all responsi-
bility.

The evils complained of and herein set forth
are all attributable to and consequent upon the
exercise by the Legislature of power and authori-
ty over the city and county of New York, never
intended to be conferred, and the unfair and ty-
rannical exercise of such power. We submit that
it is the duty of the Convention to insert such
clauses in the Constitution as will prohibit the
Legislature from destroying the civil and political
divisions of counties, cities, towns and villages
into which this State is divided, and from creating
other or different divisions thereof, except such
as may be necessary for the purpose of senate,
assembly or judicial districts; and that the Legis-
lature ought also to be prohibited from creating
any officer or board or body of persons to perform
or exercise, or authorize or empower any such
officer, board or body of persons to perform or ex-
ercise jurisdiction or authority within or over any
city of this State, in connection with any other

city, county, town, village or part or parts thereof; and that the Legislature should also be prohibited from creating any officer, or board or body of persons to exercise jurisdiction within and over the territory or people of any city of this State, unless such officer and the members of such board or body be elected by the people of the said city, or appointed by the elected municipal authorities thereof. Believing that these subjects are strictly and properly within the jurisdiction of the committee, we present this report for the consideration of the Convention,

ANTHONY L. ROBERTSON,
J. E. BURRILL.

Mr. DUGANNE, from the Committee on Industrial Interests, submitted the following report:

The SECRETARY proceeded to read the report. The Committee on Industrial Interests, having had under consideration a resolution inquiring as to the propriety of providing by Constitutional enactment, "that the measures of capacity or quantity be based upon weight wherever practicable, and that the expansion and subdivisions of such units of weight shall be in the ratio of decimals," beg leave to

REPORT:

That the regulation of weights and measures, or the fixing of a standard thereof, seems to be properly within the province of the Legislature, and may be left to that body, and your committee, while recognizing the convenience and utility of a decimal system of weights and measures which should correspond to our decimal system of coinage, are yet of the opinion that the introduction of any radical change in commercial denominations or values ought to be determined by Congress, or be based on some international plan indorsed by the commercial world.

Your committee, therefore, asked to be discharged from the further consideration of the resolution regarding weights and measures as above.

A. J. H. DUGANNE,
Chairman,

GIDEON WALES,
EDWARD J. FARNUM,
MAGNUS GROSS,
E. P. MORE,
J. P. ARMSTRONG.

The question was put on agreeing with the report of the committee, and it was declared agreed to.

Mr. HALE called up for consideration the amendment to rule 21, offered by him a few days ago.

The SECRETARY proceeded to read the amendment, as follows:

Amend rule 2 by adding thereto the following:

"No article or amendment thus reported shall, except by unanimous consent, be considered or acted upon in Convention on the same day it shall be reported by the Committee of the Whole, nor until it shall be printed; but this prohibition shall not apply to the last day's session of the Convention."

Mr. HALE—The object of this amendment is, I think, apparent from its reading. It is to secure an opportunity for the Convention to examine

and consider amendments which are proposed and adopted in Committee of the Whole and reported to the Convention for action. The immediate occasion for the offering of this amendment was the action of the Committee of the Whole and the Convention on Thursday last. A report of a standing committee being under consideration in Committee of the Whole, a substitute was introduced by the gentleman from Steuben [Mr. Rumsey] and was adopted by the Committee of the Whole; immediately upon the committee rising, a motion was made to agree with the report of the Committee of the Whole, and under the operation of the previous question the amendment was immediately adopted. I do not speak, Mr. President, particularly in relation to that amendment—it may have been a very proper one. Gentlemen in this Convention have different opinions upon that subject; but what I insist upon is this: that when this Convention has been deliberating upon an article proposed by a standing committee, and after a long discussion upon that article an entirely new article is introduced and adopted by the committee as a substitute for it, it is proper that the Convention should have an opportunity to examine that article—that it should be printed and placed upon our files before we are required to vote for or against it. It seems to me that the kind of action by which this substitute was adopted defeats the entire object of this Convention, to deliberate and consider upon amendments that are proposed to the Constitution. Now, if this kind of thing is allowed to go on, and if we do adopt amendments in this way, if they are to be put through immediately on the same day as reported to the Convention by the Committee of the Whole, under the operation of the previous question, amendments will be adopted without debate and without giving members an opportunity to inspect and see what they are, before voting upon them. It seems to me that the result will be that many amendments will be adopted without due deliberation and consideration; that has been done in one instance, I do not know but it has been done in more than one instance; and I do not see that any injury can result from our determining, that we will at least have one night to sleep upon an entirely new proposition of the kind that I refer to, and that we will have an opportunity to see it and have it before us in print, before we shall vote to incorporate it in the Constitution. It may be objected that delay will result. I do not anticipate this; I do not think any time is gained by that kind of parliamentary tactics which has been used to put amendments through and incorporate them in the Constitution. What is the result of the action of the Convention on Thursday night? It is true under the operation of the previous question, the entire article was adopted, including the substitute which none of us had an opportunity to see; but we have half a dozen resolutions lying upon the table to instruct the Committee on Revision to incorporate into that article certain amendments, which many of us think should be adopted by the Convention. The result will be that no time is gained. If the matter had laid over until next morning and an opportunity been given to offer amendments in

the ordinary way, the whole subject could have been disposed of, and have been taken up in order in the Convention and disposed of there. Now the Convention will have to consider out of order, what it would then have considered in order, whether all the amendments which were adopted in Committee of the Whole should be adopted by the Convention. I hope Mr. President for the reasons I have suggested that the amendment will be adopted.

Mr. SEAVER—I believe under an order of the Convention adopted some time ago, this resolution must go to the standing Committee on Rules.

Mr. HALE—I am not aware of any such rule.

The PRESIDENT—There was such a rule adopted, and under it this proposition must go to the Committee on Rules.

Mr. LANDON offered the following resolution:

Resolved, That the Committee on Revision be instructed to alter the form and phraseology of the article adopted by the Convention upon the "militia and military officers" so that the same shall read as follows:

"The Legislature shall provide by law for the designation, enrollment, organization, equipment and discipline of the militia forces of the State."

Which was laid over under the rule.

Mr. CONGER offered the following resolution, and asked that it be laid over:

Resolved, That the plan for a division of the State into five main districts or permanent departments—the first to consist of twelve counties, to wit: Suffolk, Queens, Kings, Richmond, New York, Westchester, Rockland, Orange, Sullivan, Ulster, Dutchess and Putnam; the second of fourteen counties, to wit: Columbia, Rensselaer, Washington, Saratoga, Fulton, Herkimer, Hamilton, Montgomery, Otsego, Delaware, Schoharie, Greene, Albany and Schenectady; the third of seven counties, to wit: Warren, Essex, Clinton, Franklin, St. Lawrence, Jefferson and Lewis; the fourth of fourteen counties, to wit: Oswego, Oneida, Madison, Chenango, Broome, Tioga, Chemung, Schuyler, Tompkins, Seneca, Wayne, Cayuga, Onondaga and Cortland; the fifth of thirteen counties, to wit: Monroe, Orleans, Niagara, Erie, Chautauqua, Cattaraugus, Allegany, Wyoming, Genesee, Livingston, Ontario, Yates and Steuben—be referred to the several committees of the Judiciary, of Education, of the State Prisons and Prevention and Punishment of Crime, and of Public Charities, to inquire and report how far the interests of the State in the several matters under their respective charge would be promoted by the adoption of such a plan.

Which was laid over under the rule.

Mr. BICKFORD—I desire the permission of the Convention that I may be absent from the sessions of Friday and Saturday next.

No objection being made, leave was granted.

Mr. CHURCH—I desire to make a statement to the Convention in relation to the situation of gentlemen connected with the Canal and Finance committees, and then leave it to the Convention to say whether these reports had not better be postponed until the first of the week. I understand, in the first place, that Governor Alvord continues at home ill and unable to attend the

sessions of the Convention. Mr. Clarke, of the Finance Committee, who has made a report to the Convention, as the Convention will recollect, is also confined by illness to his house, but he expects to be able to be here by the first of next week. Mr. Carpenter, of Dutchess, has been obliged to leave the Convention this morning, and he is also anxious to be here when the subject is taken up. I have this moment received a letter from Mr. W. C. Brown, of St. Lawrence; he states to me that he is confined to his house by a hemorrhage of the lungs; he also states that he will be able to be here by the last of this week or the first of next week. He is very anxious to be here when this subject is considered. Under all the circumstances, while I feel a great delicacy in asking the Convention to postpone the consideration of this subject, I submit whether it is not better that it should be postponed until the first of the week. I am the more willing to make this suggestion in the belief that we will lose no time. I think there are other reports ready, quite sufficient to occupy the whole time of the Convention during the present week. I therefore move to postpone the consideration of this subject until Tuesday next.

Mr. RATHBUN—I hope that will not be done. I should be very sorry that the gentlemen named should fail to be here during the discussion of these reports, and I apprehend from what we hear from them, they will be here. To my mind it is very plain that these two subjects are to take a very large amount of time, and will involve a great deal of discussion. I desire that they should do so, so far as I am concerned, for I depend upon that discussion altogether to enable me to decide how I shall vote, and I think there are many members in this Convention that rely upon that discussion for the same purpose. Now, sir, to postpone these subjects, which are the important subjects before the Convention, disarranges the whole business of this Convention. Every member has expected these subjects to occupy the time of the Convention this week, and other committees have failed to make any preparation whatever, I apprehend, relying upon the occupation of the Convention by the discussion of these two reports, and expecting it to last a week or ten days. Now, sir, the moment you leave them, and undertake to find something else to do in the mean time, you will find all the committees are either unprepared, or in a condition that progress will be exceedingly slow, and we shall literally waste the whole time. Here, if I recollect right, are two committees of fifteen, and as I understand there is one member of each committee who are now detained from the Convention, Governor Alvord on one side, and Mr. Brown upon the other. I should be very glad to hear both of those gentlemen, but I trust before we get through with the discussion upon these subjects, they both will be here, and will be able to give us the result of their observations, study and experience upon this subject, and we will have the benefit of it. I do insist with that urgency which here calls upon us to be mindful of the progress to be made in the immediate business before this Convention. We cannot attend to the accidents of members of the Convention, occasionally confined by tempo-

rary illness. I would be very glad to have them here, but I do insist it will not answer for us to stop and wait for this important business, for these gentlemen to come here and give us the benefit of their experience upon the discussion. We must go in a direction to close the labors of this Convention, or we shall be utterly unable to give it in time to the people, to understand what we have done and be able to vote upon it in November.

Mr. LAPHAM—No one can regret more than I should, any unnecessary postponement of the discussion upon these two reports. Yet, there are considerations which operate upon the minds of the committee, of which I have the honor to be a member, which induce us to fall into the suggestion made by the chairman of the Committee on Finances, in consenting to have this subject postponed. It is known to all the members of the Convention that a member of the committee, to which I belong, is absent, who from his long experience in the public service, is perhaps better acquainted with the statistics, upon which this question mainly depends, than any other member of the committee, and it is vastly important to the discussion that he should be personally present during the entire discussion. On consultation with members of the committee who are here, we all agree that it would be better to have the subject postponed for the period named. Now as to the suggestion that we are to lose time by this postponement. Let me call the attention of the gentleman from Cayuga [Mr. Rathbun], and of the Convention, to what occurred last night. I asked the postponement of this order from the commencement of the sitting last evening until this morning. What was the result? A later report of a committee was taken up and the entire subject disposed of, the article completed and referred to the Committee on Revision. Surely no time was lost by that. There are upon the files of the Convention now, two important reports, one relating to the State officers and the other relating to the powers and duties of the Legislature, which, in all probability, will occupy the remainder of the sessions of this week, then we will be ready to take up the consideration of these two reports at the opening of the Convention Tuesday morning, which is really and practically the commencement of the business of next week. I hope, therefore, the request or motion of the gentleman from Orleans [Mr. Church] will prevail. It is due as an act of courtesy, that the request, coming from such a responsible source as that, and with the full assent of the committee to which I belong, that the Convention should assent to the proposition he has made.

Mr. GREELEY—The report which I had the honor to make to this Convention was the first considered, and at great length. It was my misfortune, or my fault, that I was absent one day while that discussion went on. I certainly did not think of asking for a postponement, nor did the Convention think of postponing its action, on that account; on the contrary, I should have been very glad to hear that the Convention had gone through and completed that article during my absence. Yesterday, the gentleman whose absence now causes this motion asked, and I

helped him to obtain, by my vote with others, the reference of his report to the same Committee of the Whole which has in charge the report of the Committee on the Finances of the State; and I voted for it, right heartily. Now it comes to this: because we have referred that report to the same Committee of the Whole, we are asked to postpone our action on the report of the Committee on the Finances of the State; so that, instead of gaining time, as I hoped to do when I voted to give one Committee of the Whole cognizance of two important subjects, we are to lose time. It is not well to put out of sight the fact that, if we postpone these great questions—postpone them into September, when we have already agreed to adjourn on the 10th of September—we shall not adjourn in September at all. If this great question goes over into September, our proposition to adjourn on the 10th is an absurdity. I do appeal to this Convention—as full now as it almost ever is, and as full as it is likely often to be, that it is in a proper condition to take up these most important subjects of the finances and canals of this State. I have no doubt that those gentlemen who are absent will be here long before we conclude that discussion, and we shall hear them with great pleasure and profit; but once put aside these important questions, one after the other, and it will be always so; we shall be asked to postpone this and take up something else from day to day. I am an older man than some other delegates in this Convention—perhaps older than most of them—and I greatly desire to live to the end of this Convention. I hope, therefore, that we shall not postpone the consideration of these reports.

The Convention resolved itself into Committee of the Whole on the report of the Committee on the Secretary of State, Comptroller, etc., Mr. GARVIN, of New York, in the chair.

The SECRETARY proceeded to read the first section, as follows:

SEC. 1. The Secretary of State, Comptroller, Treasurer, Attorney-General, and State Engineer and Surveyor, shall be chosen at the same general election at which a Governor shall be chosen, and shall hold their offices for the same term as the Governor. But no person shall be elected to the office of Attorney-General, who shall not have been a counselor-at-law of this State for ten years; and no person shall be elected to the office of State Engineer and Surveyor, who shall not then be a practical engineer. The Secretary of State, Comptroller, Treasurer, Attorney-General, and State Engineer and Surveyor, elected at the general election held on the Tuesday succeeding the first Monday of November, one thousand eight hundred and sixty-seven, shall hold their respective offices until and including the thirty-first day of December, one thousand eight hundred and sixty-eight, and no longer.

Mr. DUGANNE—I move to strike out, in the second line, the words "Attorney-General."

Mr. KERNAN—I trust this amendment will prevail. It seems to me it is wise to allow the Executive of the State, with the consent and advice of the Senate, to appoint the Attorney-General. Indeed, sir, individually I am of the opinion that it would be wise to have some other of the State officers appointed rather than elected.

There should be more unity among the executive officers of the State. The Governor should have something like a cabinet to advise with and to act in unity with him in executing the great functions which are devolved upon the executive department of the government. The person who is to advise with him as to the law and in reference to grave questions which arise, it seems to me properly should be nominated and appointed by him with the consent of the Senate. I had supposed the experience we have had, satisfied all that it would be wise to go back in reference to some of these State officers, and especially the Attorney-General, to the practice which prevailed prior to 1846. It is desirable that there should be more responsibility placed upon those charged with executing and carrying on the State government. As we are now, no one is responsible for any State policy or for inefficiency or want of economy in the administration of State affairs, although there may be complaints as to heads of executive departments, and complaints believed to be well grounded, yet the Governor has no responsibility nor authority scarcely in reference to them. The State Prison Inspectors, Attorney-General, Secretary of State and executive and administrative officers of that kind, in my judgment, should be appointed rather than elected. I know that some gentlemen, on kindred questions, say, "Do you distrust the people? Do you dare to intimate that the people would not act more wisely than the Executive in the selection of those officers?" Sir, I have great confidence in the people, quite as much, I am sure, as gentlemen who make so frequent professions of regard for them. I believe, however, that in carrying on the State government, it is wise that certain officers should be appointed, and the responsibility as to their appointment and their conduct placed upon the Governor and Senate, rather than that they should be elected at general elections. Hence, I trust, in reference to this office in question, the amendment will prevail, and a mode of selecting the Attorney-General by appointment be provided in the Constitution. And, sir, I believe there are some other officers whom it would be wise to have selected by appointment rather than by election. I think the Governor, the chief executive officer elected by the people, should have power to nominate the law officer who is to advise with him in carrying on the State government.

Mr. DALY—I hope this motion will prevail. I think so far as the State of New York has departed, in the forms of its State government, from the government of the United States, in such mode of organization as is suggested to the States by the nature of that government, it has made a mistake. In all governments, the executive head must have a co-operating cabinet, agreeing with him in sentiment upon all public measures which are to be carried out by the executive authority. The President of the United States is surrounded by such a cabinet, composed of the heads of great departments. We have altered that, and we have not, in my judgment, altered it for the better. I think it is most injudicious to leave the chief adviser of the Executive, in all matters relating to the administration of the law throughout the

State, entirely independent of the Governor; to be elected by the same means, by which the Governor himself is elected, instead of making the Attorney-General that confidential and consulting officer, which he would be if he were appointed by the Governor. I cordially agree with all that has been said by the gentleman from Oneida [Mr. Kernan], and I am disposed to go farther, for the only officer in respect to whom I entertain any doubt as to his appointment instead of his election, is the Comptroller. So far as regards the office of State Engineer and Surveyor, that is an office in which fitness of the incumbent depends upon the scientific qualifications of the individual, and it is eminently proper that such an officer should be selected with that care and deliberation which is involved in an appointment, and not to have his selection determined by the causes which influence and produce a political nomination. It is, in my judgment, for the best interests of the State, that such officers should be selected by appointment. And if this amendment should prevail, I shall feel disposed to extend the change to the other officers embraced in this section, with the exception of the office of Comptroller. I hope, unless some potent reasons are assigned, that the state of things which has been presented in the past political action of the State, of the chief Executive and a group of departments, colliding on important State questions, may be avoided hereafter, by conforming, as far as possible in this respect to the form of the government of the United States.

Mr. FULLER—I do not see the chairman of the Committee on State Officers [Mr. Tucker] in his seat, and as I have the honor to be a member of that committee, I beg leave to state some of the reasons which influenced the committee in making their report on this subject. I am free to state that there are very strong reasons in favor of having the Attorney-General, and perhaps some other of the State officers, appointed by the Governor and the Senate. In the commencement of our deliberations in the committee I was in favor of making a report to that effect. But, sir, on further consideration, the committee came to the conclusion that such a report would not be sanctioned by this Convention if made, and that there would be danger it would not be ratified by the people, even if sanctioned by the Convention. Under the former Constitution of this State, adopted in 1821, the State officers were appointed by the joint nomination of the Senate and Assembly. But great abuses grew up under that system. Under it we had the installation of the Albany regency, with all its abuses. Although those abuses have measurably passed out of the memories of the people, they are not yet entirely forgotten, and there is a strong disinclination to revive them, either in whole or in part. In consequence of those abuses the framers of the Constitution of 1846 had resort to the elective system. They provided for the election of all these State officers by the people. And, sir, I think gentlemen will hardly stand up on the floor of this Convention, and argue that the people are not fit to be intrusted with this duty, or that they are incompe-

tent to discharge it. The democratic principle is, to provide for the appointment of all these officers so far as it can be done consistently, by an election by the people. This system has been in operation now for twenty years, and it has worked well. The people have shown, by the manner in which they have discharged this duty, that they are competent to its discharge. So far as State officers are concerned I am not aware that there has been any serious complaint made against them or against any of them while the present Constitution has been in force. But it is not only proper that they should be elected by the people, but the framers of the Constitution of 1846 deemed it important that they should be frequently re-elected, in other words that they should render an account of their stewardship back to the people at short intervals and ask for their indorsement. If they have proved faithful servants, they will ordinarily be re-elected, and their term of office thus extended. If they are not faithful to the trust reposed in them, and faithful in the discharges of all their duties, the sooner we can get rid of them the better, and these frequent elections afford opportunity to do so. Now, in relation to this unity which is sought to be provided for in the State government, I am not aware that any serious inconvenience has been felt during the last twenty years for the want of it. The committee have provided, as they think, for the greater unity of the State officers, so far as they could, and preserve the elective system, by providing that these officers shall be chosen at the same election as the Governor. Thus they will ordinarily be nominated by the same Convention, voted for on the same ticket, and may be reasonably expected to represent the same views, and to act in harmony with the Governor, so far as the administration of the State government is concerned. I think by this mode all the harmony that is desirable among the State officers, all the harmony among executive officers that is desirable may be secured. There is a responsibility which attaches to each of these officers, and they should be held directly and personally responsible to the people for the discharge of their duties. It is important, in some aspects of the case, that they should act in harmony with the Governor, but there is no good reason why the Governor in the main, should be held responsible for the discharge of their duties by these officers. Now, sir, if the Attorney-General is to be made appointive, the same reason undoubtedly would apply to the Secretary of State. Indeed, formerly the Secretary of State was a sort of clerk to the Governor. And if there is any officer who should be made appointive by the Governor, the reasons for its being the Secretary of State are stronger than those in favor of any other. So far as the State Engineer and Surveyor is concerned the reasons do not apply with the same force. The committee have felt themselves under some embarrassment in making a report in relation to the State Engineer and Surveyor. By the report which has been made by the Committee on Canals, the duties of that officer, so far as the canals are concerned, are proposed to be abolished or stricken out, and they no longer contemplate that this officer

should have any connection with the administration of the public works. Under the former Constitution of 1821 instead of a State Engineer and Surveyor we had a Surveyor-General. In the Constitution of 1846 the State Engineer and Surveyor was substituted for the Surveyor-General, and upon him was devolved, not only the duties of the Surveyor-General, but also the duties of engineer in relation to the canals. If the report of the Committee upon Canals is adopted the character of the duties devolving upon the State Engineer and Surveyor will be essentially changed. So far as canals are concerned there will perhaps be no further use for him. There will still be a necessity for a Surveyor-General, or a State Engineer and Surveyor or some other officer to exercise the functions of the Surveyor-General. The only other important duties which are devolved upon the State Engineer by law are in relation to the railroads of the State. Those duties are perhaps as important as any which he has to discharge. All railroads in the State are required to make annual reports to him, very detailed reports of all that relates to their business and it is made his duty to file these reports and keep them in his office, and also digest them and to present the results they exhibit to the Legislature at the commencement of each session, and those duties are important. It was a question therefore, with the committee, whether they should report in favor of the continuance of the office of State Engineer, or whether they should resolve to go back to the office of Surveyor-General and devolve these duties upon that officer. They finally concluded to make the provision they have made, for a State Engineer and Surveyor in their report, leaving the Convention to take such action on that subject as they may see fit, and in relation to his duties if the office should be retained. As I said in the outset there are very strong reasons in favor of making the Attorney-General and Secretary of State appointive by the Executive and the Senate. But strong as those reasons are, the committee did not think the people were prepared to yield to the system of executive appointments. They doubted if the Convention would ratify their action if they reported in favor of it. They therefore made the report they have, leaving the Convention to take such action as they saw fit.

Mr. CASSIDY—I hope the proposition of the gentleman from New York [Mr. Duganne] will prevail. I hope that he, or some other gentleman in this body, will extend still further the change which it indicates. I desire very much to see the offices of the Secretary of State and Attorney-General associated with that of the Governor, and dependent upon it. I consider them both as belonging necessarily to the executive department. I think, from the remarks of the gentleman who has just taken his seat, that the committee felt this impression; that they desired to make a great alteration in this respect in our present system; but they distrusted the Convention, and, looking even beyond that, with some distrust toward the people, they fell back to the Constitution of 1846. I have the greatest respect for that Constitution, and I think the tendency to fall back upon that Constitution, and ratterise

its enactments, is proof of its wisdom. I think it has been badly administered, because at the outset it fell into the hands of its enemies. I think too that the Constitution itself had some great errors. Mr. Calhoun is reported to have said, when that Constitution was adopted, that thenceforth the people of New York would be governed at Washington. It certainly was true. The eyes of the people of the State of New York, ever since the adoption of that Constitution, have been turned toward Washington. There has been all the power, all the patronage; and all the direction of our politics, has emanated from that source. The State of New York has thus been held in the hands of the politicians of other States. I would counteract this exterior influence. I would not reconstruct any central power by the mere gift of patronage; but I would add dignity and force to the executive office. I would give to the Governor the office of Secretary of State. I would give him the Attorney-General; because I think the Attorney-General, as he now is, is a sort of vagrant in the commonwealth. He belongs to nobody. "*Filius populi, filius nullius.*" He is a kind of illegitimate creation; nobody has a right to direct his movements; he is an Attorney-General without a client, or rather with any accidental client that chooses to consult him. He should have one man to direct his movements—one responsible man. We want an Attorney-General whom somebody shall order, and prescribe the duties of his office to some one who appoints him, and whom he must obey. I would not carry this principle out to the office of Comptroller, because, in the first place, I do not think the head of the money department in any government essentially belongs to the Executive office. In foreign governments the head of the treasury is always somewhat in opposition to the men who spend the money. The man who holds the money bags is always in opposition to the man who desires to spend their contents. The Ministers most worthy of the confidence of the people, in France, England and despotic countries, have been those who have resisted the importunities of the court and courtiers and of all those who had an object in getting hold of the money of the State. Besides, this State has not merely a government; it has something besides. It has the administration of great public works, which are not properly affairs of government. They are entirely independent of the Executive functions. It is the function of the Executive to enforce the laws and see that justice is done. It is not his function to administer the public works. The Comptroller should be at the head of our finance; and our finances are entirely connected with our public works. I would elect him, therefore. When we elect a Governor one year, let us elect a Comptroller the succeeding year. The people would have, then, all the Executive power. The Executive office would have the sword and the army and whatever of force there is in the State. The whole Executive function would belong to it. The Treasurer is hardly an officer; he is a check upon other officers already in existence. I would return to the old system of appointing him, by joint resolution of the two houses. We should then have the Secretary of

State and Attorney-General appointed by the Governor, the Comptroller appointed by the people, with the subordinate departments under him. We would have the Treasurer, who is a mere check on the Comptroller, appointed by the two houses. We should have the State Engineer and Surveyor appointed by any canal board in existence, if it should be maintained, or, if not, by any other board created for the purpose. This office should be stricken out of these clauses and made dependent upon such action as we may take in regard to canals. The Executive needs both the office of Secretary of State, as a part of his Executive bureau, and that of the Attorney-General. His present duty is to revise and sometimes to veto the bills that are brought before him; and the question upon which he can most legitimately refuse his assent to bills, is that of unconstitutionality, or of conflict with laws already existing; and he should have it in his power to command the services of the Attorney-General in the Executive bureau for that purpose. There is another Executive function which is an everyday one. It is the determination of granting or refusing pardons. That also is a service for which he needs both the Attorney-General and the Secretary of State. Having these two, forming with them the Executive bureau, he would accomplish what is desired by gentlemen here, to have a council of pardons; Retaining, of course, the responsibility of a single head of the department in granting or refusing a pardon, he would still have the services of the Secretary of State to elaborate evidence and receive petitions, and compare and to look back at the State files and other sources of information; and he would have the opinion of the Attorney-General always at his hand to give him the law upon the subject, to sift the testimony, and to conduct the proper correspondence with district attorneys. I believe the sentiment of the people and of this Convention inclines to some such modification of the Executive office as I have intimated. There is some distrust as to what the people desire. I think the people know what they desire; that is—substantial power. If they elect a man like Governor Seymour or Governor Fenton with power to appoint the Attorney-General and Secretary of State that is so much power to the people. If you give the people the right to elect a Governor, who has the right to appoint an Attorney-General and Secretary of State, they have all the power they desire. The people desire the control of substantial power, not the gift of many offices. We come before the people yearly with a ticket composed of thirty, forty or fifty names, which passes through the ballot-box unchanged, showing that there is no discrimination in the mind of the people; there is no striking out of one man's name and putting on of another. It is like the vote of the electoral college; it is uniform in the ballot-box from one end of the State to the other. It is a mere algebraic figure, A or B, and affords no test of judgment and discrimination as to the character of the men voted for; so if you crowd a ticket with names upon which the people are to pass every year, you practically deprive them of the power of self-government, because you give them

a problem which it is impossible for them to solve. Nobody knows anything about it, except what a few politicians or a few leaders of conventions (I speak with great respect of them) choose to dictate. Give to the people power, by giving power to their executive officers, and then demand responsibility and accountability. You will have an executive office which has functions; you will have centralization here at Albany, the capital of the State, or where ever it is, not derived from corruption, but from a proper and definite authority. The Convention of 1846 attempted to scatter all patronage and power; they made a mistake, because in doing so they established, a new central power, the power of the lobby. It was practically a most formidable central power, an agency for the distribution of franchises, which exercised the most formidable power of corruption. You have the unknown, constantly changing, and always corrupting influence of the lobby. We look to Albany, therefore, not for government, but for patronage, and patronage of the worst kind. I hope, therefore, this Convention will, with all respect for this committee, and indeed out of respect for this committee, for I believe this was their first impulse and real desire, restore to the office of Governor the appointment of the Secretary of State and Attorney-General, and make those other modifications which I have intimated.

Mr. M. I. TOWNSEND—Who wants an Attorney-General? Is it the Governor who wants an Attorney-General or the people of the State? Whose interest is the Attorney-General to look after, the Governor's interest, or the interest of the people of the State? Whose money is he to take care of, so far as his action in the courts is concerned? Whose peace is he to preserve so far as his action in the criminal courts is concerned? As I understand it, the Attorney-General is an officer created to protect the interests of the people of the State of New York. If he does his duty faithfully it matters not to the people of the State of New York whether he is in accord with the man who happens to be Governor or not. It may be very much to the interest of the people of the State that he should not be in accord with the man who happens to be Governor, in regard to questions which may arise. If the Attorney-General be the Attorney-General of the people of the State of New York, he is a dignified officer; he has important functions, and acts upon his own judgment. He acts upon his own responsibility. He acts with a view not only to please himself, but to please the people of the State of New York, and to please his God. If your Attorney-General is to be a creature of the Governor, he has to strive for the approbation of the Governor. The gentleman from New York [Mr. Daly] has seen fit to commend to our consideration the state of things existing under the national government. I think the gentleman from Albany, who has just taken his seat, [Mr. Cassidy] spoke of the beautiful system that obtains under our national government. Under the national government there is an Attorney-General, and that Attorney-General must be in accord with the head of the national government. When the head of the national government turns traitor to

those who elected him, turns traitor to his duty, turns traitor to his country, the Attorney-General must turn traitor too, and if he will not—

Mr. DUGANNE—I ask the gentleman if Attorney-General Holt has turned, too?

Mr. M. I. TOWNSEND—If the gentleman will only wait a moment I will show him how beautifully it works. If he will not turn traitor he must be turned out of office, a creature must be put into office who will become as big a traitor as his master, and perhaps a bigger traitor than he. For myself I commend to the political majority of this Convention this same national state of things that the gentleman from New York [Mr. Daly] has commended to our consideration. I concur with him in the wish that gentlemen shall look to it and see how beautifully it works. The national officers who have charge of the treasury, who have charge of the land department, like that of our Surveyor-General, who have charge of the legal interests of the country, like the Attorney-General; who have charge of the war department, corresponding to our militia system, instead of being officers of the country, are the mere appendages of the President for the time being, whether that President be the one that was originally designed by the people for that office, or be one who has come accidentally to hold that position. Now, I would have these men independent men, whether they be republicans or whether they be democrats. The gentleman from Monroe [Mr. Fuller] said that this principle, recommended by the committee, was democratic. It is democratic in its true and broad sense, and it was democratic in 1846 in a partisan sense. I thought it was democratic in 1846, standing at a democratic stand-point, and my friend from Albany [Mr. Cassidy] in 1846 thought it was democratic, looking from a democratic stand-point. What has produced the change? Have our friends got sick of republican government? Must we imitate foreign governments in as far as it is possible to carry our imitations, that there should be one executive head, and that Executive should concentrate in himself all power; shall there be but one officer, one man, one mind, one will? These gentlemen, it seems to me, have entirely mistaken the character of our government, and our institutions. We enjoy the prosperity we do enjoy in our country, because we believe there are many valuable minds amongst men, that the opinions of all sorts of men ought to be concentrated in the administration of the government. In this we have a great advantage over those governments of the old world where everything is concentrated under one executive head, and where but one mind is supposed to control the State. For myself, I wish to say that although I have gray hairs externally, like the gentleman from Westchester [Mr. Greeley], who has told us he has got to be an old man, I am not getting to be an old man internally. I have not got sick of republican government, and I hope to Heaven this Convention is not sick of republican government. If they are sick of republican government, they will find the people of this State are not. I say to gentlemen now, who by their scheming are trying to thwart the powers of the people of this State, in contriving a plan to prevent their influence in the gov-

ernment of this State, that they will be mistaken in the end if they put provisions in this Constitution that shall essentially change the character of the government. The people of this State have not got the dyspepsia. There is another suggestion I wish to make. My friend from New York [Mr. Daly], and my friend from Oneida [Mr. Kernan] and my friend from Albany [Mr. Cassidy] can very safely advocate these measures here, however anti-republican they may be in their character. But they will come around by and by, just as my friend from Albany does when he goes out of this house and gets down to the foot of State street, and says it is a republican measure, and calls upon the people of this State to condemn it because the republicans have a majority in this house. The responsibility is to rest upon the majority in the end. It is all very well to invite the fly into the parlor with honeyed words, but when the fly gets into the parlor, then he will have time to sit down and contemplate the character of the host that invited him in. Now, the people of this State have not asked us to take away their powers. There was no audible groan through the halls of the State of New York from the people of the State, sighing that they were weary of the exercise of the power of electing their own officers. I believe that we are not carrying out the public will if we shall undertake to deprive the people of their power. They may be entirely willing to change the mode of exercising that power in many respects, but they have not asked to be divested of it. Nor have they proposed to abdicate that sovereignty which the gentleman from Rockland [Mr. Conger] spoke of the other day with so much propriety and so much zeal. They feel themselves entirely competent to the duty of electing an Attorney-General as well as he could be selected by politicians in the city of Albany. One gentleman has stated that there is no complaint but that we have a good Attorney-General. Does any man doubt that the present occupant of the position is as competent a man as any we have ever had? Yet the people of the State of New York selected him. There are many more in the State of New York who are abundantly competent to fill that position. Now, we had a very deliberate discussion on this floor upon the mode of selecting our district attorneys. It was suggested by some gentlemen that district attorneys ought to owe their appointments to the Executive, as their duties were to aid the Executive in the enforcement of the laws. The Convention did not believe that it was necessary to vary the established usages of the State, established for the last twenty years, for the purpose of accomplishing that object, and they made the district attorneys of the counties elective by the people. And yet the district attorney has but a single function substantially, and that is his duty of attendance in the criminal courts for the enforcement of criminal law. But by the Constitution as it must stand when we get through—by the laws of the State as they must stand when this Constitution shall be adopted (if our work shall be adopted by the people)—the Attorney-General is an officer having most important functions outside of his connection with criminal affairs—most im-

portant functions, independent of all matters with which the Governor is connected. Who is he to please in the exercise of these functions? To whom is he to look as his approver or condemner in the doing of his work? Is it the Governor of this State, who really has no interest in this question any more than a private citizen, or is it the people of this State? Now, I hope we shall not go backward; I hope we shall leave the selection of this officer to the people of the State, as it was democratic to do twenty years ago, and as, I believe, it is both democratic and republican to do to-day.

Mr. PIERREPONT—I would like to know whether the members of this Convention are prepared to go before the people with the Constitution which we shall propose, and to say to the people that we have given up all our confidence in elections by the people. If so, let us say it, and have nothing covert about it. I listened to the gentleman from Albany [Mr. Cassidy], who told us that the Attorney-General ought to be appointed by the Governor, because now the Attorney-General belongs to nobody, but is a sort of bastard who ought to be appointed by some one who might order him, and that nobody can order him but the one who appoints. Now, if I understand the duties of the Attorney-General, he should be one who cannot be ordered by anybody. He should be a man whose opinions should be above any fear of the loss of office, one to whom nobody could say, "Either give me this opinion or you will lose your place," or that opinion or "I will remove you from office." If I understand the duties of the Attorney-General, they are of the highest order; they are as high as that of any judicial officer; and there is no more reason why the Governor should have power to remove the Attorney-General unless he gives just such an opinion as suits him than there is that he should have power to remove the chief justice of the court of appeals unless he shall give just such a decision as suits the Governor. I would like to know whether this Convention are ready to go before the people and say that they propose no longer to have the judges elected by the votes of the people. If so, let us say it, and let the people understand it. But until they are ready to say we will have judges elected no longer, I think they are not prepared to say we shall have an Attorney-General elected no longer. The Attorney-General, as I said, should be as independent as any judge. His opinions are upon great questions, affecting the great interests of the State. He ought not to be a mere creature of the Governor to supervise his vetoes and obey his dictation. No office can be held in this State of more importance, none should be more independent; and until this Convention is ready to say to the people that we propose to abolish the election of judges, I am satisfied they will not be ready to say we will change the mode of making an Attorney-General.

Mr. VAN CAMPEN—As a rule, a government to be respected must have power. To be safe, power must be limited and defined. The government to be efficient must have a single head, responsible for the exercise of its power, with which it is entrusted for the execution of the laws

which are to operate over the whole people. Gentlemen ask, why do you take away power from the people, and are you going to take away the elections from the people? You take no power from the people. It is simply providing a mode in which the people provide for the execution of the powers of the State. If it is better for the State that the Governor, elected by the people, should select the Attorney-General or the Secretary of State or the Treasurer, have the people not sense enough to understand that you take away no power from them? It is simply a mode of delegating power. What is the difference whether you exercise the power of electing the Attorney-General directly, or whether you delegate it to the Governor and allow him to select the Attorney-General? There can be but one principle in regard to this matter. If you desire efficiency you must have an individual head, and that head must be clothed with power sufficient to effect the objects which you desire. If there were any vicious provisions in the Constitution of 1846, it was where they established a divided responsibility, where the conscience was left out. It was where the responsibility was given to boards, so there was nobody to be found who was responsible for the things that were done that were wrong. There was no conscience in it at all. I trust the people will not be confused in this matter when they are talking about the different departments of government—the law-making department and the executive department. It is simply playing upon words here to say that you are taking away power from the people. You are only providing for the most efficient manner of the execution of the wishes of the people by giving power to the Governor to select the proper agents for the execution of those laws. If the people, as a whole, provide for the election of these agents to fill these departments, it might make a difference. But you trust those things to a large, promiscuous caucus or convention. The selection may be wise or unwise; that does not touch the point. It is whether you will get more efficiency out of one system than out of another. If you can satisfy people one system is more efficient than another, they will take that system. For myself, I am in favor of clothing the Governor with power, and I would have that power limited and well defined.

Mr. ANDREWS.—I am in favor of the amendment which has been proposed providing for the appointment of the Attorney-General. For, sir, in my judgment, it is not essential to consistency, that gentlemen who support this amendment should adopt the suggestions which have been made, looking to the appointment of all the officers of the State. I do not think that the Comptroller or the Treasurer, who are charged with the custody and disbursement of the public money, which is under control of the Legislature, and is to be disbursed under its direction, should be appointed by the Governor, or should be nominated by him. But, in my judgment, there are considerations of an entirely different character applying to the question under discussion. But, sir, for one, I have no desire, nor will I upon this floor, whenever the question arises as to whether this officer or that officer shall be elected, place

my support or objection to such a provision upon the allegation that the people demand this, or desire that. What the people demand in this State, Mr. Chairman, is good government. And they do not care whether it is secured through agencies elected directly by them, or indirectly by the superior agents whom they may designate. It may be important to politicians to increase the number of elective officers in this State; but so far as my judgment and experience goes, the people care not one whit how State officers shall be designated, provided, in the frame of the government which we present to them we shall furnish adequate agencies under proper arrangement for carrying on the government of the State. Now, who is the Governor of the State of New York? He is the Executive arm of the government of that State. All the chief Executive powers are vested in him, and by the express provision of the article which we have already adopted we have imperatively charged him with the execution of the laws. As the chief Executive power of the State he is commander of the military forces of the State; and last night we passed an article allowing him to designate and appoint the chief officers under his command. Did we take from the people any powers which properly belong to them when we decided that the major-generals acting under the commander-in-chief should be designated by him? Not at all. We did it because having charged the Governor as commander-in-chief of the forces of the State, and with the execution of the laws, it was proper to vest in him the nominations of the chief subordinates under whom that agency was to be executed; and for the same reason, and upon the same consideration, in my judgment, should the Attorney-General be designated by the Governor. What is the duty of the Governor? Why, we command him to see that the laws are executed. What is the position of the Attorney-General, and what are his duties in the distribution of the powers of the State? He advises the Governor in the execution of the laws; he advises him in respect to measures that are to be enforced. In my judgment, when you say that the Attorney-General shall be elected by the people, you confer on the Governor, on the one hand, the functions of the Executive, while on the other, you divorce from his control the agencies by which he is to execute the laws. Moreover, Mr. Chairman, how shall the laws be executed? They are to be executed through the exercise on the one hand, of the military power of the State; on the other hand through the proceedings in courts of justice for the purpose of enforcing the laws, securing the protection of life and property and protecting the rights of the State in the litigations in our courts. And is it not eminently proper that the agent whom the Executive must employ for this purpose should be a man selected and designated by him, as upon him alone rests the responsibility for their execution. We have conferred upon the Governor the power to negative the laws which may be proposed by the Legislature. It becomes the duty of the Executive in determining whether such a law shall be ratified or negated by him to consider the question both as to its public policy, and as to its constitutional authority. Hun-

dreds of the laws passed at every session of the Legislature involve these considerations. We are not to expect or suppose, in ordinary cases, that the Governor will be qualified to pass upon these questions which he must consider. And who is his legal and appointed adviser? The only one furnished by the State is the officer called the Attorney-General. I submit when the responsibility of negating laws rests upon the Executive then you should confer upon him the power of selecting and designating that public officer upon whose opinion he must rely, and upon whose opinion upon questions of constitutional law, will be determined his own action in the premises. We do not take away power from the people. We have already designated the Executive by the voice of the people. Is that taking away power from the people? Not at all. When we say he shall appoint the Attorney-General we simply say this necessary adjunct to the Executive shall be designated by the one upon whom the executive responsibility rests. I trust we shall not be cried down by the talk about "the people." I say if we give the people good government they will be eminently satisfied, and in a republic or any other kind of government we must submit to the essential conditions of government, if we have good government at all. I trust this amendment will be passed.

Mr. GERRY—I offer the following further amendment:

The SECRETARY proceeded to read the amendment as follows:

Strike out the whole of the first eight lines and insert in lieu thereof as follows:

SEC. 1. The Secretary of State, Comptroller, Treasurer, Attorney-General and Surveyor shall be appointed by the Governor, with the advice and consent of the Senate, and shall hold their offices for the same term as the Governor by whom they were appointed. No person shall be appointed to the office of State Engineer and Surveyor who shall not be a practical engineer.

Mr. DUGANNE—In the consideration of this subject in the committee during its first days of session a majority, I think, of the committee were in favor of reporting a provision for the appointment, not only of the Attorney-General, but of the Secretary of State, by the Governor, and of the Treasurer by the joint action of the Legislature, leaving the Comptroller to be elected by the people. The committee stood five to two in that respect, but it was afterward changed relatively, so as to stand five to two against appointment. The change of sentiment, I think, was induced by this consideration, that the people and the Convention were not prepared to accept a report which should propose to take away from the people the power of electing their officers. Now, sir, I think that if a vital mistake shall be made in this Convention, it will be because we do not understand what the people want in this regard. I believe that the delegates to this Convention were sent here to effect a reform mainly in the judiciary, and that if we fail to answer to the people by establishing some such reform or taking some steps toward a reform of the judiciary, we shall not respond to the people's demands. But, sir, I am weary of this cant about the people.

The people, as the gentleman who has just taken his seat stated, demand good government, and the reason that the people do not have good government now is because there are delegations to nominating conventions and State committees and general committees that come between the people and good government. Sir, if we could really have the people of the State express their will, and if that will might be carried out by a nominating convention, I would not desire to abstract a single iota from the electoral power of the people of the State. But now, sir, we have these conventions with their corruptions, with their log-rolling, with their exchanges of localities, coming between the people and their wishes. I say that the people ought to demand that the government of this great State should be centered in one head, and that one head should be held responsible for the government; and if that one head be not equal to the duty of securing a good government to the people, it should fall, and with it all its arms. I, sir, stand here without fear of being called an enemy of the people. My life has been a *pronunciamento* in behalf of the people and of popular liberty. I fear not to be called to account by any citizen of this State, or any man who knows me, on a charge of being inimical to the interests of the people. I say here that the people must demand that their elected head shall be responsible. I maintain that the people of the whole commonwealth ought to demand that the Governor of the commonwealth shall be responsible for his subordinate officers. We have a most anomalous system of government in this State, and under it we have sometimes a house divided against itself; we have hydra-heads, not rising from one body, but rising from hydra-bodies—from different bodies in conflict continually with each other. Sir, I ask if there is a single commission in the city of New York that is responsible to the people or to any head whatever? We give the Governor certain power, or we give the Legislature certain power to create local commissions or agencies; but when those agencies are once created, they lift themselves above the people, and are irresponsible to any power whatever.

Mr. M. I. TOWNSEND—Will the gentleman allow me to ask him a question?

Mr. DUGANNE—Certainly, sir.

Mr. M. I. TOWNSEND—If it be true that what the people want is good government, is it not perfectly lawful to create these commissions irrespective of the people?

Mr. DUGANNE—Yes; I hold it is lawful; that it is advisable. I am wholly and fully committed to the principle of the State, whenever it is necessary, interposing in the affairs of subordinate or local government. I hold that the State should accept for its example the government of the United States in that respect; and precisely as the government of the United States is bound, by the Constitution, to interpose whenever republican equality is threatened in any State, so, also, should the State, by its government, be bound to interpose whenever good government and social order are threatened in any local community. I maintain that my ideas are perfectly symmetric on this subject. It is because I believe the people

may have unfit authorities placed over them in cities—bad and venal officers, who are not responsible—that I would have at the head of the State an Executive who shall be held responsible for everything pertaining to good government. We talk about the Attorney-General being a creature of the Governor. Why, is not the chief clerk of the Treasurer, or the chief clerk of the Comptroller, a creature of either of these officers, simply because they are both appointed by them? Sir, we expect that heads of departments alone shall be held responsible to the people. We do not take into consideration their appointees. Those appointees are not known to the people; it is the officers we recognize and elect whom we must hold responsible. It is because now, in electing our different sets of officers, and thus encouraging, perhaps, a conflict between them, we do not hold any one responsible—it is for this reason that I object to some parts of our present electoral system. In relation to the Attorney-General, I can conceive of cases where a Governor may call upon that officer, who is his constitutional adviser, for counsel in respect to the legality of some bill passed by the Legislature, and I can also conceive that the Attorney-General, being wholly independent of the Governor, may have interests adverse to the Governor and the people in respect to such a bill, and may give a false legal opinion to the Governor, in order to subserve other interests than those of the State—perhaps those of certain nominating conventions which elevated him ostensibly to be the adviser of the Governor. I do not see to whom the Attorney-General is responsible in such a case, until at the end of his term another man may aspire to his place and to nomination in the same way. But if a corrupt Attorney-General be placed under the Governor, who is responsible for his appointees, he may be called to account at once, on the very inception of wrongdoing. Again, you have just determined that in the custody of the Governor solely shall remain the pardoning power. We have re-placed that very onerous duty upon him, and now I ask that you shall give him, not only a constitutional adviser, but assistance in the transaction of all business which pertains to the pardoning power. This assistance is imperatively demanded by the Executive if you would have him serve the people fully and faithfully. He ought not to be asked to perform his arduous duties without assistance in some shape from the Attorney-General, the Secretary of State, or such other officers as may be fixed upon. He cannot really be, as he should be, the head of this great State, if you deny him the aid of proper officers—whether you call them a cabinet or not—who may, through him, be held responsible for the good conduct of the government.

Mr. GERRY—I withdraw my amendment for the present.

Mr. VAN COTT—It would unquestionably be very convenient—if the recommendation of greater convenience is of any consequence in the selection of Attorney-General—if the power of making that selection were conferred upon the Governor, as it would be in the selection of many other officers in important departments of the State. The question is, whether that selection

can safely be intrusted to the Governor. If it has the recommendation of superior convenience, and it is safe, then unquestionably it is the better mode of selection. Now, the opposition to this amendment is based mainly upon the ground that it is not safe to intrust to the Governor the power of appointing the Attorney-General; and this has been put both upon a special and upon a general ground. The general ground most frequently urged, and which we have heard repeated *ad nauseam* during the sitting of the Convention, is that power is removed from the people—that we are going back upon popular government—that, as the gentleman from Rensselaer [Mr. M. I. Townsend], said, we are becoming sick of republican government. Now, sir, what sort of an opinion is to be entertained of the popular idol, if the people who select the Governor cannot select a Governor who can be trusted to select an Attorney-General? What becomes of the boasted capacity of the people for self-government, if the people who select the chief magistrate are not able to select a man who can be trusted with the selection of his subordinate officers? If he lack the intelligence, or lack the integrity, to make that selection, I repeat, what becomes of the boasted intelligence of the people? This idea that we are renouncing popular government, and that we are becoming sick of republican government, because we wish something to be occasionally done without the direct intervention of the people, is the merest fallacy and the merest cant. The gentleman [Mr. M. I. Townsend] referred to the Attorney-General of the United States, of whom he has spoken in terms I do not wish to repeat here. I do not think the Attorney-General of the United States is a traitor. I do not agree with him in many of his opinions. I think he has made many great mistakes, but that he is a traitor, that he deserves to be spoken of here in the terms which the gentleman from Rensselaer [Mr. M. I. Townsend] has employed to characterize him, I do not think. But, sir, take his illustration of the Attorney-General. His argument is, that the Governor ought not to select the Attorney-General, because it has turned out that the President of the United States, who selects the Attorney-General, is supposed to have made a great mistake in that selection.

Mr. M. I. TOWNSEND—Will the gentleman allow me to correct his memory? It was not of the Attorney-General that I spoke as a traitor. I spoke of the chief Executive of the country as a traitor to those who elected him, or to the principles on which they elected him.

Mr. VAN COTT—That may be, and yet be entirely foreign to the present discussion. The gentleman might say a great many things about the President and others, which would be as entirely irrelevant as his explanation makes his allusion to the Attorney-General and the President of the United States.

Mr. M. I. TOWNSEND—If I said no such thing about the Attorney-General, I was correct in calling the gentleman to order in regard to it. And if the gentleman will allow me further to explain, he has no occasion to read me a lecture for correcting him in his apprehension of what I have said.

Mr. VAN COTT—Take the gentleman's instance, as apparently relevant, or as entirely irrelevant, as his explanation makes it; let us look at it for a moment; let us consider it relevant for a moment, that the President of the United States made a mistake in the selection of the Attorney-General—who made the President of the United States? who made the first mistake? The Attorney-General, if I may express an opinion on the subject, is a very much wiser and a very much better man than the President of the United States. The Attorney-General was selected by the President; the President was selected by the people; but what does it prove? It proves nothing more than that mistakes can be made in the selection of men for office and in the administration of the government. Does the selection of President Johnson, in my view of his character, prove that the people ought not to select the President of the United States? By no means. Does the selection of Attorney-General Stanbery by the Executive prove that the Executive ought not to have the selection of the Attorney-General? By no means. The facts may prove that the people were mistaken in the one case and the Executive in the other; but not that power is not properly placed, and placed through the right agencies, both in the election of the President and in the appointment of the Attorney-General. My friend from Rensselaer [Mr. M. I. Townsend], if he will permit me to call him my friend, notwithstanding I may have misunderstood him, asks if we are sick of republican government. No, sir; I am not sick of republican government. I am in love with the government of the United States—heartily in love with it, as I think he undoubtedly is, too. But what is this republican government of the United States, of which I am not sick—a government constituting its officers partly through the direct choice of the people, and partly through the indirect choice of the people, appointed to various great executive offices. This government, of which I am proud, and with which I am in love, selects its Chief Executive officer as we do, and that Chief Executive officer appoints the Attorney-General, as I desire that our Executive shall. Who is sick of republican government, the gentleman who wishes to abandon that system or I who wish to adhere steadily to it? Now, what is there in this idea of the people being called upon, all the time, to do every thing—to intervene directly in the selection of every body, and in doing every thing that is done by every body? What is a representative government? It is a government which is not at all administered by the people directly, which is always administered by the people indirectly through its representatives. We, by our system of government, exercise the whole tremendous function of legislation through representatives selected by the people. If the people can select representatives who can make laws by which we are governed, cannot the people select another representative who can appoint an Attorney-General? We administer our system of laws in courts of justice through representatives selected mediately or immediately by the people; cannot the people who select those representatives allow them, if it is convenient, to do something besides the interpretation of

laws? We execute the whole tremendous force of the State through the executive department—through an agent, a representative, selected by the people. While it is emphatically true that the whole function of legislation, and the whole function of judicial administration, and the whole function of the administration of the laws, is through representatives selected by the people, I ask if power is taken from the people when we advise the people to allow their representatives to do something else that is convenient for them to do, and which, under the circumstances, they can do more judiciously than the people themselves? Take this very business of selecting an Attorney-General; take the practical operation of the system—not your sham and cant about the people, to take in the people, but as the people see it and do it. You call a Convention to nominate an Attorney-General. You call two conventions, and those conventions present to the people of the State a choice between A. and B. You shall have for your Attorney-General A. or B., and the people, confined to this narrow circle of selection, always take A. or B., under this elective system. Turn to the system of appointments, and say to your Governor, your representative, whom you clothe with such great, important and responsible functions, "Instead of shutting yourself up in the selection of an Attorney-General, as we do by the elective system, to the choice of A. or B., you may choose from the whole bar of the State of New York; you may take the oldest, the wisest man of any party, who is ablest and best adapted to the particular exigency in which you are called upon to take the advice of an Attorney-General. Take the whole bar, and make the best choice you can from this large range of selection. And then—you having the power to take from the bar of the State the best man in the State for the particular function that is to be exercised—we will hold you responsible that you make a proper selection for Attorney-General, and keep him in office only so long as he is proved fit for his place." Gentlemen here talk about "going back on the people," about repudiating the principles of the government. I say, sir, that that is the merest cant. I say it is discreditable to the intelligence of this body. Why, sir, what do we do now in this determination? We are making merely a proposal, as a Committee of the Whole, to go to the people, to recommend a particular system. We cannot force anything upon them. When we go to the people, whom we respect, and whom we respect too much to constantly flatter them in this style, we tell them frank and plain truths, and we say to them, "In our judgment this is the best way to do this thing; but we cannot dictate anything to you. We are assembled here to advise you—picked men of the State, whom you have sent here—in regard to the best mode of doing this thing. If you don't like it, reject it. We think it is best. We put our intelligence, our experience, such wisdom as you suppose we possess, to back our advice, and then we leave to you the determination of this whole matter." Sir, I despise from the bottom of my heart this standing cant about "the people;" and I say it is treating the people with a bitter

scorn and contempt to be constantly making these *ad captandum* appeals to their intelligence. I respect their intelligence too much to flatter them in that way. I respect their intelligence when I can say to them, "Here are certain things which you can do best directly, and here are certain other things which you can do better indirectly—which you can do better through intermediary agents." I go to them and frankly say, "Do this yourselves, and let others do that." I respect them the more when I advise them to do the thing directly, or to do it indirectly. I respect them too much to be constantly flattering them with the idea that every thing can be done best in the first instance, directly by a vote of the people. The contrary is notoriously the fact. The people cannot always select the best doctor, the best lawyer or the best agent. The people can sometimes make a better selection by delegating the selection to an intermediary body. There is a deliberate choice to make, and that choice is made upon a solemn, official responsibility. I say, therefore, that we give the people sound and respectful advice when we say to them, "Do not allow yourselves to select only from A, B or C for the office of Attorney-General, but tell the Governor to go to the bar of the whole State and select from it its most approved talent and its highest professional character; put upon him the responsibility for the selection; give him a large scope, and then he will be responsible for the manner in which he discharges that great public trust."

Mr. BARKER—I am in favor of having the Attorney-General of the State appointed by the Executive; and it is for the reason that, in my judgment, the most friendly, cordial and intimate relations, both social and political, should exist between the Governor and the Attorney-General of the State. If the committee shall make this office appointive I shall then offer an amendment providing that he shall discharge no other duties than those that are entirely professional. It is not contrary to the doctrine that the people shall govern and choose their officers to say that the Attorney-General shall be appointed. When we secure to the people the right to choose the executive, the legislative and the judicial departments of the government, then we have established a truly republican government. It is well known that in times that most try the stability of the State the questions of disturbance arise upon political issues. The great State trials of the country sometimes arise out of *quasi* political disturbances; and I think that the Executive who has charge of the execution of the law should have as his counselor and Attorney-General a person who is in accord with him in opinion, so that offenders and felons shall be brought to the bar of justice and earnestly and efficiently tried. If they have diverse political sentiments, belong to separate political parties, and they are antagonistic to each other, the Executive can then have no support, no friendly and true counsel from the Attorney-General. The gentleman from Onondaga [Mr. Andrews] has expressed my views completely upon this subject; and if he will permit me to say that I indorse every word of them and make his speech mine, I will conclude my remarks.

Mr. M. I. TOWNSEND—The gentleman from

Onondaga [Mr. Andrews] commenced that series of references to those who spoke about leaving the power of the State in the hands of the people, that culminated in the case of the gentleman from Kings [Mr. Van Cott], in the declaration that these references to the people had been uttered *ad nauseam*. The gentleman from Onondaga [Mr. Andrews] also stated in his remarks following my own, that politicians might be anxious to give more offices to the people at large, as it gave better opportunities for obtaining positions. I am obliged to both of the gentlemen for the very favorable views that they took of the motives which led me to occupy the position that I saw fit to assume upon this question. If it is a comfort to those gentlemen to entertain those opinions, certainly, as I esteem them both very highly, I hope they will enjoy that comfort to the largest possible extent. But it does seem to me that there was an unfortunate selection of the individual to whom reference was evidently made in the remarks which the gentleman from Onondaga [Mr. Andrews] made upon this subject.

Mr. ANDREWS—Will the gentleman allow me one moment? I disclaim all personal allusion to himself.

Mr. M. I. TOWNSEND—I accept the disclaimer; but the remarks stand upon the record and I must answer the remarks [Laughter]. I have felt (I must make so far an allusion to myself)—I have felt proud to occupy the position that was occupied by that old French grenadier La Tour d'Auvergne—the position of a "mere grenadier of France." I have been all my life simply a grenadier of the people, and have come to this place to bring my mite of care and experience and consideration to assist in making the fundamental law of this State. I have lived a private citizen, and, by the help of God, I mean to die a private citizen; and it is because I am one of those very people I spoke about that I venture to say what I believe is for the well being of the State of New York. One word more, personal to myself, and I have done. The gentleman from Kings [Mr. Van Cott] met with my most cordial assent when he called me his friend; but the gentleman might remember, if he will allow me to say so, that there is nothing in his personal, professional or official position that will justify him in reading me a lecture in regard to the manner in which I conduct myself on this floor. Having said thus much, I have done, so far as that subject is concerned. Why did I allude to the case of the President? It was for this reason: The President and his Cabinet constitute a large number of officers engaged in the discharge of duty under the national government. If the people elect them all and they are all faithful, the people have chosen so many public servants; but the people of the United States and the people of the State of New York are mere creatures, fallible, liable to mistakes, liable to be deceived, liable to select men that they would not, with fuller knowledge, have elected. Now, if you make a mistake in your President, that mistake controls the character of every one of these national officers. If you make a mistake in your President, you have made a mistake in your Attorney-General. If you have elected a President that you think will keep in Mr.

Speed, and your President prefers Mr. Stanberry, then the fact that the President has the appointment makes your mistake affect the two officers instead of one—affects every officer of the national cabinet instead of affecting the President only. But if each officer was elected by a separate power, if each officer was elected by some outside authority that gave each their position, you would have to make a mistake in all the officers before you got the whole influence of the government perverted. And so it was for this reason that I referred to the national government. I respect the national government as much as any man can respect it, I claim to be as loyal to the Union as it is possible to be; but I have not forgotten that the national government was formed when there was not a republican model on the face of the earth. All the wisdom of that day was concentrated in the formation of the national government. It was a miracle of wisdom for the day in which it was formed; but it had to be formed either upon the original good sense of the men who formed it, or upon the models of the kingly governments of Europe, where there was a single Executive, and that Executive had concentrated in himself all power. But, during the period of almost a century that the national government has stood, and that our State governments have stood, men have had an opportunity to combine facts—to see the working of one system and another, and to compare one republic and one organization with another; and it is not arrogant to say that men, at this moment, understand the working of republican government better than they understood it in 1787. If they do not, we have lived in vain. If there has been nothing learned since 1787, we might have closed the book of the world in 1787, and not have looked further. The gentleman from Onondaga [Mr. Andrews] has seen fit to lay down this principle—that all that the people wanted was good government, and that they cared very little how it was attained. I have not given, perhaps, the last part of the sentence in his exact words, but that is the idea. I do not believe that that is a republican idea. However truly republican my friend may be—I believe him to be most truly a republican in feeling and sentiment—I do not believe that that is the idea that prevails in any republic that is worthy of the name. That is the idea on which the French government is formed. Louis Napoleon says, “All that France wants is a good government. I will give you a good government.” Following the illustrious lead of Louis XIV, he says that the State is himself, *L’etat c’est moi*, is the doctrine of Louis Napoleon. I do not believe that that is the republican doctrine of the State of New York. Now, look for a moment at the other States of this Union. This matter of making the executive officers of the State the clerks of the government, the appointees of the Governor, prevails but to a very small extent among State governments of the present day. If we go backward we go alone. Everybody else believes that it is wise in so far to depart from the organization of the general government, as to make the heads of the bureaus of State, having independent duties to perform, independent men. That is the doctrine of this Union. It is the doc-

trine of the other States, whether they be democratic States or whether they be republican States, or by whatever name they may locally call themselves in their political organizations. But even men of the olden time, away back to 1821, did not discover that in order to carry on the business of the State discreetly, wisely, advantageously and harmoniously, it was necessary that the Attorney-General and other State officers should be the mere clerks of the Governor. From 1821 to 1846 the Attorney-General was not the creature of the Governor any more than he is now. The Governor had no voice in his selection whatever; he was selected by the State—that is by the State in Senate and Assembly assembled. He was made the high officer of the State, to do the work of the State, and not the work of the Governor. I do not wish to reiterate an argument that I have presented, but what is the idea of an appointment by the Governor? Here is a question presented to the Governor for consideration. Do you wish him to have the aid of an independent mind; the aid of a mind that comes to the discussion of the subject without bias, or do you wish him to have the aid of a man who will lose his place if he does not give the advice that the Executive wishes him to give? Because we may as well look at the thing just as it is, and when Mr. Speed will not give opinions satisfactory to Andrew Johnson Mr. Speed steps out of the cabinet. I am not thus anxious to discuss this subject as supposing that any protracted remarks of mine may change the opinion of any gentleman upon this floor, but I wish to put upon record here the views which actuated me in standing up against the proposition to transform the executive officers of your State into mere tools of the Governor, as I believe there is no possible advantage to be attained by so doing.

Mr. TILDEN—I do not rise for the purpose of debating this question, but I do rise to make a single observation in regard to the allusions that have been made incidentally during the course of this debate in respect to a great officer of the government of the United States, at present officially the head of the bar of the United States. I allude to Henry Stanberry, Attorney-General. Who is Henry Stanberry? Sir, a more elevated man in all his personal relations, in his private character and in his standing as a member of the bar of Ohio and of the United States, exists not anywhere in this country. Not a politician—never a politician—a man who, all his life, has assiduously followed the calling to which he devoted himself, with acceptance among all the bar of the West and at the bar of the supreme court of the United States, and with the most entire respect of all the eminent judiciary of the country. For the purpose of illustrating an argument here, I have heard that gentleman alluded to here as if it were something scandalous or infamous on the part of the President of the United States to call him to his present high position. Sir, I have not, and never had, any political affinities with Henry Stanberry. He was an old whig; he afterward was a republican. In one thing, sir, I certainly have had affinity with him. He took a very active and a very emphatic part in favor of

the government, residing as he did in the northern part of Kentucky, though carrying on his professional business in Cincinnati. He was not appointed Attorney-General because Mr. Holt or Mr. Anybody else failed to heed the behests of the President. Unless I misunderstand the history of that office for the last few years, there has been no Mr. Holt in that office since about the day of President Buchanan, or his immediate predecessor.

Mr. M. I. TOWNSEND—It was a mere mis-speech on my part. I did not mean Mr. Holt.

Mr. TILDEN—Yes, sir; it was a mis-speech; and I think all the speech, so far as it alluded to Henry Stanberry, was a mis-speech and should be retracted.

Mr. M. I. TOWNSEND—Yes; from the gentleman's standpoint.

Mr. TILDEN—Sir, the offense of Henry Stanberry has this extent and no more—that in the construction of one or more acts of Congress he came to a conclusion, as a lawyer, different from the conclusion which some gentlemen on this floor maintain on that subject. I have not studied those questions. I am not prepared to express an opinion whether he was right or whether he was wrong; but I do say that no human being has any grounds to impeach Henry Stanberry of anything, except differing in opinion on a legal question from the impeacher—nothing else whatever. I have a right to speak, in this manner because of an exhibition that I scarcely regard as becoming to this occasion or this body, in the free use of the name of a very elevated, pure, perfectly honorable, and highly respectable man, who, if I mistake not, rose to his present position with the entire accord of such men as Chief Justice Chase and Mr. Justice Swayne of the supreme court of the United States, and the whole bar, of whatever politics—unanimously confirmed by the Senate of the United States. I have had, myself, in the course of the last ten years a personal acquaintance with this gentleman, growing out of professional engagements in the West, and have had reason to know not only what he is, but what the esteem of him is among the bar of Ohio, and the bar that surrounds the bench of the United States in Washington, and I say that there is none higher.

Mr. CHURCH—The arrangement that shall be made in the Constitution in relation to State officers, as they are called, I regard as very important. The duties which these officers have to perform, collectively and individually, are of the most important character. I shall adhere, as a general rule, to the principles of the present Constitution—not without some doubt of its entire propriety—supporting a provision requiring these officers to be elected by the people. I believe that the officers who have the controlling influence or power over the funds of the State, and the control over the expenditure of money, should be elected by the people and be made responsible to the people in short periods. But, sir, I shall support this amendment in relation to the Attorney-General because, while I am in favor of the general principle of electing these State officers, I do think that the Governor of this great State of New York ought to have at least one officer

with whom he can act, and with whom he can consult upon terms of entire confidence; and I believe that officer should be the Attorney-General of the State. On more than one occasion in this State, after an eminent citizen has been elected Governor of the State, and has come here and been inaugurated into the office of Governor, I have seen him here as bare-handed and as unsupported as Alexander Selkirk was upon the desolate island. I have seen him obliged to go to the bar of this city and personally employ distinguished counsel to act for him and advise him in the discharge of the duties of his office. This ought not to be. The Governor and Attorney-General of the State ought to occupy relations toward each other similar to those between counsel and client. I know the Governor has intercourse with all the State officers, officially, and in that cold official intercourse he may have confidence in their advice and co-operation; but, sir, there ought to be that confidential relation which only exists between client and counsel existing between the Governor and the Attorney-General. The Governor needs this advice in relation to the laws which he is called upon to approve or dissent from. He needs advice, sir, in relation to this great power of pardon which has been conferred upon him. He needs it, sir, in the prosecution of criminals throughout the State, and he needs it in a great many miscellaneous matters of the highest importance which come before him for decision and determination. And to this extent, at all events, whether the Convention go further or not—to the extent of giving the appointment of Attorney-General to the Governor, I hope the Convention will adopt the amendment which has been proposed.

Mr. HISCOCK—I desire to call attention, at this time, to the remarks made by the gentlemen on this floor making a comparison between the cabinet officers of the United States and the State officers under the Constitution of our State. The former, sir, are not officers recognized by the Constitution of the United States. They were, in the first instance, created arbitrarily by the President of the United States simply to discharge the duties that otherwise would devolve upon him. The cabinet officers are appointed by the President simply as his first clerks, to do, in his name, such acts as he may determine upon. Such, sir, has not been the history of the State officers in this State during the continuance of the present Constitution; and I trust it will not be their history during the continuance of the Constitution we are now about to recommend to the people. It has been remarked by gentlemen upon this floor that the Governor is the chief executive officer of the State. The Governor is not the chief executive officer of the State, if it is meant by this that he is responsible, in the first instance, for the executive department of the government—he is simply called upon to discharge certain duties, clearly defined in the Constitution; so much he is permitted to do and no more. As regards the Attorney-General, we have, or I propose that we shall, mark out for him, as was marked out under the old Constitution, the strict line of duty that

he shall pursue. He should not be simply the attorney, the confidential friend, or the legal adviser of the Executive, but he should have his constitutional duties to discharge. The Governor has not been responsible for the faithful performance of those constitutional duties on the part of the Attorney-General; and if that officer discharged those duties well and faithfully, he received the approbation of the public. And, sir, I have never heard that a constitutional officer was held responsible for the acts of another when their several duties were clearly defined by the Constitution which created them. If gentlemen desire to create a private adviser for the Governor, let them do it; if they desire to give the Governor a private counselor, let them do it; but so long as there is a constitutional officer to be designated under the head of Attorney-General, who is to have separate functions to discharge, I say it is for the people to put him in his place, and not for the Governor, who is not and cannot be responsible for his discharge of those functions. Much has been said, sir, upon this floor reflecting upon gentlemen that have attempted to pay deference to what the people might think upon this question. As for me, I desire to say that, so long as I stand here as the representative of the people, so long I shall never characterize it as "cant" an attempt to reflect their wishes. Much has been said in regard to the people calling upon us only for a good government. Sir, with the gentleman from Rensselaer [Mr. M. I. Townsend], I desire to protest against any such idea. Sir, they call upon us for more than that; they ask that, so far as may be, they shall participate in that government; that they shall create that government, that they shall administer the affairs of that government. It is not enough that we give them simply a good government; it is necessary that they shall participate in it, that this government may never depart out of their hands, but may always be within their control. It is all this that they ask from us. Again, sir, if there is any gentleman upon this floor who desires to give the Governor a counselor, an attorney, some gentleman that shall advise him as to when he shall exercise the Executive prerogative of veto or of pardon, let them incorporate a provision of that kind in the Constitution, that the Governor may select counsel, if he pleases. But so long as they provide for an Attorney-General, clearly defining as in the present Constitution what he may do, what his functions shall be, in no wise holding the Governor responsible for his conduct, I insist, for one, sir, that it is for the people to indicate who that officer shall be.

Mr. FULLER.—The argument of the gentleman from Orleans [Mr. Church], instead of proving the correctness of the position that he has assumed toward the amendment, proves directly the contrary. It was fortunate for the people, at the time spoken of by him, that they had an Attorney-General to represent them in that department of the State. It was because the Governor of the State, as I hold, misrepresented the sentiments of the people of the State at that time, that the Attorney-General ceased to become his legal adviser, and he was obliged to call in outside counsel

in the city of Albany. I think it was fortunate for the people that they had the Attorney-General to represent them when they had not a Governor, and the next time they got an opportunity to do it they righted that matter. This is the strongest argument that has been adduced, to my mind, in favor of making the office of Attorney-General elective, instead of appointive.

Mr. CHURCH.—The gentleman seems to assume that I referred to a single instance. I have known it to happen in the case of two Governors, one representing each political party of the State.

Mr. FULLER.—No matter; the principle of the case is not altered. The Attorney-General is just as much a representative of the people as the Governor is; and that argument has satisfied me that it is best to hold him as their representative, and not to transfer the responsibility of his appointment to the Executive. Then, sir, some gentlemen seem to have a sovereign contempt for the people. But by whom are we sent here? We are sent here by the people. In a few days we shall have to go back to the people, to render an account of our proceedings here, and we had better endeavor, while we are here, to discover and carry out the will of the people. We are sent here to carry out that will and embody it in the Constitution of this State; and we are not sent here for the purpose of advising them as the gentleman from Kings [Mr. Van Cott] would suggest, what that will should be. We were sent here, not for the purpose of making a new Constitution; but we were sent here for the purpose of amending an old one. Was there any complaint against this provision in the old Constitution? Was there any complaint that the Attorney-General was incompetent? Was there any complaint that he was inefficient? Was there any complaint, under the Constitution of 1846, that the State officers were incompetent or inefficient? None at all, sir. This is not one of the defects of which the people complain; it is not one of the defects which they have sent us here to amend. But a gentleman behind me [Mr. Van Campen] says we want an Executive at the head of the government clothed with power in order that we may have an efficient government. Sir, for the last half century nearly, the Governor has not had the power of appointing the State officers. He has had nothing to do with appointing or removing them, except the power to suspend the Treasurer until the meeting of the Legislature. And have we not had an efficient government? Has there been any complaint that under the Constitution of 1821, or under the Constitution of 1846, the government has been wanting in efficiency in administering the affairs of the State? I have heard no such complaint among the people. There is no evil in this regard which the people have sent us here to remedy. The gentleman from Onondaga [Mr. Andrews] says that all they require of us is good government. Yes, sir; but what is good government? That is the question. Is it monarchical government? Is it a government in which the power is kept furthest from the people or in which it is kept nearest to the people and in which they do not let it slip out of their hands? The nearer the people retain the appointing power to

themselves the more republican is the government; and the further it is removed from them the less republican is the government. The gentleman from Kings [Mr. Van Cott] proposes to remove it further, and that, instead of directly exercising the appointing power, they shall delegate it to other hands to exercise it for them, because the latter can exercise it better than they can. I deny the proposition, sir. The gentleman from Onondaga [Mr. Andrews] says that the people take no interest in this matter. They do take an interest in this matter; and, sir, if you take the power of appointment away from them, you will find, when they come to deposit their ballots at the polls, that they do take an interest in this matter, that they are unwilling to give up this power of appointment, and that they are unwilling to give up this direct responsibility of these officers to themselves. Sir, if you take this elective provision out of the Constitution, my opinion is that the Constitution which you adopt will not be ratified at the polls. One gentleman on my right [Mr. Barker] says he concedes that the judiciary should be elective. The reasons against the election of officers apply with much greater force to the judiciary than to State officers. There is every reason why State officers should be directly responsible, at short periods, to the people, that there is that the Governor should be elected by the people and responsible directly to them. It is said that there is not sufficient unity and harmony under the present system. I think the only complaint which has been made in regard to a want of unity or harmony in the administration of the State government is that which has come from the gentleman from Orleans [Mr. Church], and it has been very small indeed. There has ordinarily been unity and harmony in the State government among its officers, sufficient to insure an efficient administration. But to obviate any objection upon that score the committee have put in a provision that the Governor and State officers shall all be elected at the same election. They will, therefore, all be ordinarily of the same political views, being nominated and elected upon the same ticket. My attention has been called by a gentleman near me to the commission business, and, sir, I am against that whole thing, and at the proper time, when that question is properly before this Convention, I shall vote for a republican government in the city of New York; for testing the question whether the people there are capable of governing themselves, or whether they have got to let it out to other hands to be done for them.

Mr. LAPHAM—I am in favor of the amendment proposed by the gentleman from New York [Mr. Duganne] to the section now under consideration, and yet, sir, I am a friend of popular government. I believe in the rights of the people. I believe in giving to the people the largest liberty which is practicable in the administration of the affairs of the government. But, sir, between the exercise of the power of a pure democracy and the exercise of the functions of a representative government, there is a point which should be selected as the dictate of prudence, of caution and of safety. It will not do, in the administration of the affairs of a government, to

give to the people the exercise of every power, because it is impracticable and unsafe. Now, my friend from Rensselaer [Mr. M. I. Townsend] partakes with me in the common sentiment which led to the adoption of the elective principle embodied in the present Constitution. A word by way of retrospect may be instructive upon the lesson from which I draw valuable experience on the subject now under consideration. How had the Convention of 1846 embodied this principle in the Constitution? How had that Convention its origin, and what are the lessons to be drawn by way of experience from its action? The people had become alarmed; they were apprehensive that the State was to be involved in a large and overwhelming debt for the purpose of constructing our public works. They were alarmed and apprehensive at the concentration of political power at this capital, hence "The People's Resolution," as it was called, hence the demand for constitutional reform, and hence the Convention of 1846. I was ardently in favor of that Convention, and, in the main, I believe it did its work wisely and well; but, sir, as is the case with all popular movements of that character, it was carried in some respects, in my judgment, too far in the opposite direction. It was carried so far, sir, that prohibitions upon the improvement of our public works were placed in the fundamental law by that Convention and adopted by the people, which, within the next eight years, through the medium of constitutional reform, they had to lift off their shoulders. But sir, during those years, I whereased it and resolved it, in my youthful enthusiasm as a radical democrat, through the columns of the newspapers, that we would elect all the postmasters, and all the officers of the government of the United States by the people. It was a popular clamor. So far did the movement go, sir, that organizations existed in almost every county in this State proclaiming that no member of the legal profession should be selected for any office whatever in the gift of the people. Now, sir, from that extreme to which public sentiment had run, we have, to a certain extent, recovered. The clamor in regard to the election of the officers of the general government has passed away, and it so happens that in the selection of the members of this Convention two-thirds, or nearly two-thirds of them have been chosen by the people from the ranks of the legal profession. In the disposition which was made of the offices of the State with a view of decentralizing power in 1846, the Attorney-General was clothed with the discharge of very important duties in the administration of the State government. In addition to his duties simply as the legal officer of the State, he was made one of the important administrative officers, a member of the canal board, a person discharging various functions outside of his duties as a legal officer and adviser of the Executive. There was, therefore, at that time perhaps in the policy which then prevailed, some propriety in saying that he, in common with his associates in the various boards, should be elected by the people. But in the article which I have had the honor to report from one of the committees, we take away from the Attorney-General

the great mass of the exercise of the duties which were thus devolved upon him, and he will remain in the future as he was prior to 1846, simply the legal officer of the State, his functions mainly those of an advisory character to the Executive, as an aid to him in the administration of the law, and of a legal character in the prosecution of public offenses against the peace and good order of the State. Now, sir, the simple question arises, how shall he be selected in the future? Shall he be appointed as he was prior to 1846, by some other department of the government, either the Executive or the Legislature, or shall he continue to be elected by the people? I am in favor Mr. Chairman, of returning to the appointing power, so far as this officer is concerned. I am unwilling to ask the people of this State to say hereafter to the Governor, "We have chosen you to the responsible office of Governor of the State. We have charged you with the administration of the laws, but we are not willing you should select the person who is to aid and advise you in the discharge of that important duty." I am unwilling to select and clothe with the power which is to be given to the Executive, to cast upon him the responsibility of exercising these important powers, the pardoning power, the power of sanctioning laws, the duty to see to the execution of the laws, while at the same time the only person upon whom he can lean as an adviser in the discharge of these duties, is selected by the people, independent of him, if not to reign over him. The selection belongs to the Executive, and the amendment of the gentleman from New York [Mr. Duganne], in my judgment, places it where it should be.

Mr. VERPLANCK—I would like to ask the gentleman a question, how he provides for the payment of the salary fixed for the Attorney-General?

Mr. LAPHAM—Not in the article to which I referred.

Mr. BAKER—As a member of the committee who made this report, perhaps I am responsible in some degree for procuring the insertion of this section, as it stood in the Constitution of 1846 substantially. I did so, sir, in the belief that it would meet the approbation of this Convention. I did do so, sir, in a stronger belief that it would meet the approbation and comply with the demands of the people of the State. Now, sir, I have listened here for some time to the arguments which have been propounded against the election of the Attorney-General, and I believe it sums up in this: one gentleman from Albany [Mr. Cassidy] says it would give the Governor more dignity; another gentleman says, "it will produce unity in the cabinet of the Governor, and in the discharge of his executive duties." Another gentleman, from Onondaga [Mr. Andrews], a source from which I had hardly expected the enunciation of such a doctrine, says that it would produce a more efficient execution of the laws by the Governor, and that all the people want is efficiency, and power, and strength in the government. Well now, sir, I concede all that the people want is a good and efficient government, and if we were sure that the Governor would always make a better selection than the people can make, that

he would always be an honest man himself, that his appointee would always execute the laws with good faith and with fidelity, we might agree with the gentlemen over in "Sleepy Hollow" that it would give a more efficient government, and that is all the people want. Why, sir, the government of France is, perhaps, to-day as efficient a government as there is in the world, except, perhaps, the autocrat of Russia, and every argument that is now used or ever has been used, for the last thousand years, in the maintenance and support of a monarchical government, of a one-man power, has been repeated here by the advocates of the appointing power—that it makes the government stronger, and makes it more efficient. But I have not heard one of the gentlemen who advocate the appointment of the Attorney-General by the Governor say, or pretend, that it would make a more honest government, and *that*, it seems to me, is a great point with the people. It was said, sir, by Daniel Webster, whom we concede was something of a constitutional lawyer, and something of a politician in his day, that the most united and the most efficient government in the world, and the simplest government in the world, is a despotism. You give to one man the power of the sword and the purse, and whose will is law and you have got a simple government, and almost all over the continent of Europe the crowned heads tell the people, "we know better what you want than you do, we can make better selections of Attorney-Generals and military generals, and secretaries, we can make a better selection than you—you, the rabble." Why, you select your officers you select your candidates at the political meetings. Well, now, I would inquire of the gentleman from Onondaga [Mr. Andrews] where do we select our Governor, and who selects the candidate? Has he not for the last twenty years been selected by the same identical delegates who nominated the other State officers, and how do gentlemen stultify their reason when they say "you, the people, are competent to elect delegates to a State convention, to nominate a Governor, but you cannot make a wise selection in nominating an Attorney-General." Now, to me, this is a practical stultification. If I have sufficient intelligence to select out of this Convention a delegate to send to the State convention, to nominate for me a candidate for Governor, I will say to that gentleman, "I will trust you further, I will trust you with the selection of all the State officers, and I believe you can exercise your judgment as efficiently, as candidly, as honestly and as capably, as to confine it solely and alone to the selection of a candidate for Governor." It has been said, sir, that the Governor needs counsel, that he needs unity in the discharge of his Executive duty; but no gentleman here has pointed out what particular duties devolved upon the Governor in which he needs the advice and counsel of the Attorney-General. No gentleman has pointed out a solitary instance that has occurred within the last twenty years of any injury arising to the people from any diversity or difference of opinion between the Governor and the Attorney-General. When gentlemen will specify, with certainty, the

evil which we are asked to remedy in the future, then, perhaps, it may be advisable to change our present Constitution on that subject. Now, I have not, since my election as a member to this Convention, heard one voice among the people demand a change in that respect. But the people all knew I was not a candidate for Attorney-General, and they have expressed their opinion to me without reserve. The gentleman from New York [Mr. Daly] says that it will give the Governor more unity, and strength, and respectability (perhaps I do not use his precise words), and that we ought to model after the government of the United States. Now, the gentleman did not limit in his remarks the extent to which we should model after that government. As he is a democrat, I am somewhat surprised. I take up a democratic newspaper every morning and read in it the enormous abuse of power growing out of the appointing system originating from the White House. We are told that thousands of agents, collectors, assessors and a thousand other offices are filled by the Executive or by his appointment, who are subject to his will and removable at his pleasure, and we are told that it is a power which Governors even, with good intentions, are apt to abuse from a want of proper information and a proper knowledge of the character of the appointees and how to make their selections; for this is true, sir, that wherever there is an appointing power you will find a mass of barnacles hanging about the Capitol with the tenacity of a death grip.

Mr. BARKER—Will the gentleman permit me to ask him a question, if he has not heard the people demand some reform in the canal board, the contracting board of this State, who are now all elected by the people?

Mr. BAKER—When the canal question comes under discussion I will answer the gentleman. But I will say now to the gentleman, in response, that I have heard of no abuse and of no dishonesty practiced by the Attorney-General or his predecessors in office.

Mr. BARKER—I admit that.

Mr. BAKER—Very well, sir. I am now discussing the propriety or the impropriety of the people holding in their own hands the election and appointment of their own powers. If, sir, abuse has grown out of anything connected with the Attorney-General, or anything he has done in connection with the canals, it has been this: the Attorney-General, under a law passed subsequent to 1850—the precise date I do not remember—has commenced the prosecution of numerous actions against defaulting contractors and their bail, and no sooner have the Legislature met than they have released both the contractor and the bail, or ordered the Attorney-General to discontinue the actions. I have never known the Attorney-General to be guilty of violating any law in that respect or being derelict in his duty. The source, sir, of corruption has been within these halls, if you want to designate it by the term of corruption. I do not always. I say bad legislation, hasty, inconsiderate unadvised legislation, perhaps this term might apply to a large mass of the legislation which in

the popular mind is called corrupt, and would be more appropriate. Now, sir, we all know that the government at Washington, is a model on this continent, as compared with the European governments, because the appointment of more of the officers of the government come from the people. Still, we do know this, that when the President has the power of appointing his Attorney-General, and desires to carry out any particular view or scheme, political or otherwise, we know very well what the consequence is, a sort of compulsory conformity with his views. This morning you will take up a newspaper and see that some correspondent has suggested that there is a conflict of opinion between the President and his Attorney-General, or in the cabinet, or a conflict between some member of the cabinet and the President. To-morrow morning you will see it is hinted that there is a prospect of a removal within a few days. The next morning you will see a successor named in the public print, and in a week or so you will see the change has been effected. And then you will see an opinion given in accord with the Executive will. Now, it is questionable whether the absolute rights of the people are better protected, take it year in and year out, century in and century out; it is questionable whether the absolute power over the Attorney-General by the Executive conduces to the highest and best interests of the people. Some political clique, cabal, or party may carry this whim to-day, but to-morrow it may be thwarted by the same power. It might be as well if the Attorney-General owed his appointment directly to the people, and felt dependent upon their sovereign power for his existence as an officer. Now, sir, there is no just comparison between the State government of New York and the government at Washington, as has been very ably pointed out by the gentleman from Onondaga [Mr. Hiscock]. The executive officers or the cabinet ministers at Washington are the creations of the Executive himself, organized and created at his suggestion, but State officers in this State have independent duties to perform that the Governor has nothing to do with. A large proportion to-day, of the duties of the Attorney-General and other State officers are created by constitutional and statute law, with which the Governor has nothing to do and I would ask any gentleman what particular statute or constitutional duty has the Governor ever been called to perform, that it has become requisite and necessary for him to have a confidential adviser who would not disagree with him? When has it happened in the history of this State? Now, sir, there is more in this opposition to the election of our public officers by the people than appears. I am not much surprised to hear sentiments of that kind come from a certain quarter of this State. Why, sir, long ago the leading politicians in the largest city in this State came to the conclusion, and frequently declared in private conversation, that a republican form of government was a farce and played out, and that it was time to begin to inaugurate a new doctrine and the time has almost arrived, when there are men almost within the hearing of my voice, who will hear it announced in a political party platform, that we need a stronger government, that

we must remove that government further from the people, that we cannot have a powerful and efficient government directly deriving its authority and immediate power, and holding its power from the voice of the people; we cannot have a strong government in that way. This doctrine is now popular in some portions of the State, but I regret to hear it coming from the West. I believe sir, that the people are competent to select in their primary town and ward caucuses their delegates to their county, senatorial and other larger district conventions. They are as capable of selecting delegates to go and select State officers to be supported by their respective parties as they were to select delegates to nominate the gentlemen that constitute this Convention, and if they could not make at least as good a selection, they might possibly shake my confidence in popular government. But I shall still, notwithstanding this, adhere to the popular democratic theory, that in the people is vested all political power, and it must be exercised by them, and the nearer you can get it to the people the better, because it is a better expression of their opinion, a better expression of their will and their wishes. Now, the gentleman from Ontario [Mr. Lapham] says he is a friend to popular government, yet he would take from the people the power of appointing all their officers. He would say, "I, Governor of the State of New York, although elected by your votes, can now exercise my judgment in selecting an inferior officer better than you exercised your judgment in selecting me." Do not gentlemen see the solecism and absurdity of such a position? If there was, sir, one predominant sentiment in the State of New York that ruled over every other sentiment calling the Convention of 1846, and in prompting that Convention to the perfection of the Constitution which they gave us, it was to break up that foul and corrupting appointing system which created the old Albany regency, that controlled the nominations throughout this State, even to members of the Assembly, sheriffs and county clerks. The lowest officers within the gift of the people were almost within the control of that gigantic regency, having its head here in less than a dozen men. The gentlemen constituting this Convention are not such young men that they cannot go back to 1846, and remember the fact that it was that that led, among the people at least, to the adoption of the Constitution of 1846. It was to break up that regency which had been controlled by one democratic leader here for over twenty years, and who had surrendered it over into the hands of the whig regency for a number of years longer, but which the Constitution of 1846 effectually broke up. I do not believe if you could assemble all the legal voters in the State of New York within the hearing of this Convention, and they could say by one acclaim whether they would adhere to the distribution of power among the people, giving them the power to elect their officers, or confide it in the Governor, I believe there would be almost one unanimous vote in favor of retaining the power in the hands of the people, and it was with that understanding, it was with that belief, sir, that I joined with the committee in signing this majority

report, and I trust, sir, that the amendment of the gentleman from New York [Mr. Duganne] will not prevail. If it does prevail I can assure gentlemen that a few more such clauses in the Constitution will compel me and many other members in this Convention to go home and then and there advise the people to express their opinion, as no doubt they will, to put down the work of this Convention. I do not believe we were sent here to cheat the people out of their power, to take from them the rights which they now hold, and which they exercise as discreetly as any appointing power we ever had in this State.

Mr. GREELEY—I do not presume to love the people so well as some gentlemen on this floor. I do not know that I trust them so thoroughly; but this I say, Mr. Chairman, that if I were exceedingly anxious that the people of this State should have the largest possible power over the choice of their Attorney-General, I should still insist that the proper mode of making an Attorney-General was to confide the choice to the Governor. For, Mr. Chairman, I know, and we all know, that the popular sentiment has very great weight, both in the selection and nomination of Governors, while, with regard to these State officers, so-called, it has no weight whatever. I do not say these are not usually good men and well selected; but I do say that the popular sentiment is not felt in their selection. Considerations of locality, and of adaptation to form a ticket which shall satisfy different interests, different sections—a very good and weighty consideration—enter into the choice; but the popular preference between Mr. A. and Mr. B., who are presented as candidates, does not enter at all into the choice. I trust that the selection of these officers will be confided to the Governor of the State. I feel very sure that that will best suit the people, best gratify their wishes and promote their interests.

Mr. BAKER—What is the sentiment of the people in regard to the appointing of the Secretary of State, the Comptroller, and the other State officers?

Mr. GREELEY—My firm conviction is, that if our Constitution shall have them all selected as they used to be, the great mass of the people will be heartily satisfied with the change. The great body of our voters do not want as many names on their ballot as are given in a whole chapter of the Bible. They generally know their candidates for Governor and Lieutenant-Governor, and know that they are fit and worthy men; and they would prefer to have their Governor select the minor State officers, and only vote themselves for the two highest, as they formerly did.

Mr. BAKER—One more question. Have the people expressed any dissatisfaction with their Attorney-Generals for the last twenty years, and if so, who, and when, and where?

Mr. GREELEY—I presume we were sent here simply because they did not like the working of things as they are. I came here, I know, mainly because I thought the Constitution of 1846 a very bad one, and that a better one was needed and might be made. I believe the popular judgment is that the Constitution of 1846 is worse in the average than that of 1821; and that we shall meet

the public wishes by going a good way back toward the latter, as well as improving that of 1846 in other respects.

Mr. OPDYKE—I desire to say that I am strongly in favor of the amendment before the committee. When the question of defining the powers and duties of the Governor of this State was before the Convention, I ventured to express the hope that his power would be increased by this Convention, and in furtherance of that view I ventured to offer an amendment to section four of the article in which these powers and duties are enumerated, so as to include the power of nominating, and, with the consent of the Senate, appointing all officers of the State whose appointments are not otherwise provided for. That amendment would certainly have been a very proper one, if we shall determine to confer on him any appointing power, but I was not able to get votes enough for that amendment to secure the ayes and noes upon it. I am very much gratified by the sentiment that has been expressed here to-day in favor of making the Governor in fact what the Constitution calls him in name. It declares expressly, not that the supreme executive power resides in him, but that the executive power of the State shall be vested in him. That is the declaration. That is the letter of the Constitution, and yet, sir, under the present Constitution (and I begin to fear, still more in the one we are about to propose), he has no executive power whatever—not the slightest. The State government is divided into separate departments over which he has not the slightest control. We confer on him no executive power whatever. We do confer upon him the power of thwarting the execution of the laws in giving him the pardoning power; but I defy gentlemen here, to point to a particle of executive power conferred on him. Sir, I desire to give a little of my personal experience in a similar situation, having been once honored with the position of chief executive officer of the city of New York. The laws conferred on me no power of control whatever over the departments—departments more numerous than those of the government of this State; and more important, if we look at the amount of money expended in them. I was perfectly powerless. I saw a want of efficiency and a want of economy, in their administration; but the law conferred on me no power to remedy the evil. It is precisely so with the Governor of this State. He is called the chief executive officer. The gentleman from Onondaga [Mr. Hiscock] very properly declared that he was not so in fact. I desire, sir, to make him in fact what he is in name; and if we desire an efficient, faithful and economical administration of the executive departments of the government, we must give him control over his subordinates who aid him in the administration of the government. There is no other way. All experience teaches us that it is the only safe way. The experience of the government of the United States is an example, as we have all witnessed. We have seen the unity, the concentration of purpose, and the power of the executive department of that government, and that it has produced more efficiency of administration than we have produced

here. If we desire to obtain the benefits of that increased efficiency, fidelity and economy, we must confer this power on the head of the executive government.

Mr. KETCHAM—Although a member of the committee signing this report, I hope this amendment will be adopted. I believe, as has been said here, that all the people want is a good government; and I believe, Mr. Chairman, they want just as little circumlocution and as little of the paraphernalia of wire-pulling as they can get, and this is one reason why I hope the amendment will be adopted, and I shall vote for it.

Mr. M. H. LAWRENCE—I did not intend to participate at all in this debate, but when gentlemen have expressed themselves so strongly, have expressed such strong distrust and doubts as to the ability of the people to elect their officers I feel it my duty to make a remark or two. I regret to see gentlemen losing faith in the people. One gentleman that has addressed us says that the Convention of 1846 went to the extreme of conferring too much power upon the people, while the gentleman on my right [Mr. Greeley] advises us to go back toward the Constitution of 1821. Now, I do not understand this to be in accordance with the spirit of the times, nor with right and justice. I believe one gentleman, the gentleman from Ontario [Mr. Lapham], remarked that the people at that time thought that no member of the legal profession should ever be elected to an office, but he said that this had become exploded, and pointed to this Convention as a proof that the people had got rid of their vagaries by sending to this Convention a large majority of lawyers. I am willing to admit that this Convention is composed mainly of lawyers, and the most eminent ones in the State, but I do not know that that is proof that the people have changed with respect to the views they entertained in 1846 about popular government. Now, I am not here a lawyer, and I might say (you will pardon me for saying it) that it may show a want of discrimination, it may show a want of interest on the part of the people to have elected men to this Convention entirely representing the legal profession and hardly any other calling. I, in common with a few others, more immediately represent the laboring men of this State. Those gentlemen that come here from cities are the ones that are loudest in their exclamations of distrust of the people. I come from one of the rural districts of this State, and I declare to you that my experience goes to prove that the doctrine of allowing the people to elect their representatives has worked well. It has worked well in every respect as could be desired in the locality from which I came, Western New York. We have better judges than we had prior to 1846, more faithful and more intelligent, and when we put a judge in office, if he proves to be a good one, we keep him there. I say the practical effect has been in that direction. I never had as high faith in the people as I have to-day in the necessity of confining all political power in their hands. What do we talk about giving the people power for? We are here to reflect their will and wishes, and all I hope and want to do is to reflect what I

know of the wishes of my constituents, those that more immediately sent me. I think it is the only safe depository of power, and I am alarmed almost when I see so many in this body, especially gentlemen representing cities, so anxious, and so fearful to trust the people. A gentleman on my left [Mr. Bergen] asks me how I stand on commissions? I believe in local republican governments. I am in favor of allowing every locality, as far as possible, to elect their rulers. I believe there is no way but to allow the people to govern and control. The supreme power does reside there. That is our theory, and if we are wrong in theory, let us abandon it. I have not seen that the practice was wrong. Why, the arguments that have been used to-day are that we must have an efficient, a stronger government; the argument used by the gentleman from Cattaraugus [Mr. Van Campen] is that we want a positive, strong government. A kingly government is a strong government. That argument will go to justify the building up of a monarchical government here instead of building up a republican government.

Mr. VAN CAMPEN—Does not the gentleman recognize the distinction between a government regulated by law and one of absolute power? I see gentlemen have not recognized that distinction; the one case is that of the monarchy of the empire of France, where we have a government of law and unlimited power.

Mr. M. H. LAWRENCE—This is the first successful experiment of a republican government that the world has ever witnessed; this government of ours. I believe in it. I have seen it in practice, and I have faith that it is to be made more perfect, and the only way to make it more perfect is to allow the people to have more efficiency and power in its control. If there is any cause of evil, it is in this, that the people do not pay that attention to public affairs that they should do. Now, allow me to say one thing more. What would be the effect, supposing you confer the appointing power upon the Executive? Gentlemen in this Convention are somewhat conversant with political matters in counties. I know in our county we have what are called "cliques." We have men entertaining different views in counties. We have that in all the counties, and perhaps in the cities. Now, they want a person appointed by the Governor. What is the practical operation? Immediately one clique selects their prominent men to go to Albany to use his influence with the Governor, and get their man appointed. The other clique starts to Albany to get their man appointed. They surround the Executive. Governors sometimes have not lost their ambition; they may want to be President or something else, and the Governor now will be just as liable to make a bad appointment, and more so than the people, from the very fact that he will begin to inquire who have the control of that county politically, and who is to send delegates to the next State convention perhaps, and I will guarantee this thing, that the Governor will think, perhaps, that that man is the best man who is the representative of the majority in that county. I can tell you that was the trouble in the appointment of judges and other officers prior to 1846, that cliques of politicians might control

the nominations in all the counties of the State. That is what is to be again inaugurated if you introduce this system of appointment. We shall have the appointments made through cliques, instead of only by the Governor.

The hour of two o'clock having arrived, the PRESIDENT resumed the chair, and the Convention took a recess until half-past seven o'clock.

EVENING SESSION.

The Convention re-assembled at half-past seven o'clock, and again resolved itself into Committee of the Whole on the report of the Committee on the Secretary of State, Comptroller, etc., Mr. GARVIN, of New York, in the chair.

The CHAIRMAN announced the pending question to be on the amendment offered by Mr. Duganne.

Mr. GERRY—I am opposed to the amendment of my colleague from New York [Mr. Duganne], both in theory and upon principle. In theory, because in substance it seeks to invent a mode of governing the State which the wisdom of twenty years has shown to be unnecessary. Upon principle, because it is aimed at the right of the people of the State to elect their highest law officer, and I ask the earnest attention of the gentlemen of the Convention for a few brief moments while I state the grounds upon which I insist that this amendment should not obtain. Indeed, before the amendment is entitled to consideration at all, some certain, definite, specific ground for its adoption should be shown by its upholders; the presumption, of course, being in favor of the report as presented, because it has met with the sanction and approval of gentlemen of great ability, to whom it has been specifically intrusted, and who have expressed their opinions after mature deliberations. The argument in favor of this amendment rests substantially upon three grounds, and I shall content myself almost exclusively with considering those grounds, and the answer to each which has suggested itself to my mind. The first is, that "the Governor of the State, as the chief executive officer, requires the services of the Attorney-General as his private counsel; and hence, if that officer be elected, there may be a difference of opinion between them fatal to the proper administration of the government of the State." Is the Attorney-General in any sense a private officer? He stands technically the head of the bar; he is presumed to be the embodiment of the legal wisdom of the State; he ranks the bar in whatever court he may appear; his very name carries with it the embodiment of power, and he is vested by statute with the performance of great and serious duties which are not second even to those possessed and exercised by the Executive itself, and any appointment of that officer possessing and exercising these powers and duties after all must resolve itself into one of two measures. Either it must be a private, personal feeling, which actuates the Executive in the selection of his legal adviser—assuming that the Attorney-General, under those circumstances, is to be merely a legal adviser of the Executive—or else it must be a partisan appointment, an appointment made in order to grat-

ify political purposes, or to subserve political means, or to reward political support. And then the practical result of this appointment is, that the people of the State of New York are deprived of all control over their highest law officer, and he is entirely within the scope of the power of the Executive—is merely the creature of the Executive to carry out the private purposes of the Executive; he holds his office only at the instance of the Executive, is accountable to none but to the Executive, and hence he is responsible to nobody. Where, under these circumstances, does he differ from a mere private counsel employed or retained by the Governor at any time to furnish him with legal advice? It may be said that the Governor himself is responsible to the people. I shall consider that presently in a different branch of my argument. But the Attorney-General is, if this amendment prevails, relieved from all responsibility except to the person who appoints him. Now, this Convention has already once formally expressed its opinion in relation to the election or the appointment of public officers who are intrusted with grave and important public duties. Every consideration which influenced this honorable body to veto the appointment of district attorneys and to provide for their stated election at specific times, weighs with sixty times more force against the appointment of the Attorney-General of the State of New York, because that officer is at their head. He is the substantial chief of these sixty different district attorneys; he officiates by them as his representatives in these sixty different counties, and he has, as I have already shown, the power, practically, to supersede any district attorney at his pleasure and *nolle prosequi* any indictment at any time he may see fit to assume, if I may use the word, the prerogative and privilege of the district attorney in any criminal case, because the district attorney is, in fact, only his representative and in no sense his superior. Now, then, assume the Attorney-General to be appointed by the Governor. Does he owe anything whatever to the man who appoints him? Are there any considerations of personal gratitude for the gift of the position? Are they to influence, will they influence him in the opinions which he may be called upon to give as to the legal course to be pursued by the Executive of the State? Is he any more certain to be impartial in those opinions if he is appointed than he would be if he were to be elected? Surely where there is one man having a controlling power over the action of another, the exercise of that power must affect the liberty of thought and action of him who is controlled, to a certain degree, in his movements. It is utterly impossible that any man who holds public office at the power and volition of another can fail to recognize in some degree the controlling power, the private wishes and views of him at whose instance alone he holds that office. I submit, then, that the idea of a "diversity of opinion between the Executive and the Attorney-General," which is here urged as a reason for the superseding of the practice which has existed in this State for over twenty years should not be regarded. Why, any diversity of opinion that may exist between the Attorney-General and the Executive is, in

reality, but a very wholesome check upon the movements of the Executive; because here we have two separate officers, the Executive of the State, exercising the high prerogative of his official position, and the Attorney-General of the State, elected like the Executive, at the instance and by the will of the people, and at the same time, wielding a power not second to that of the Executive itself. Here are these two great State officers—the great Executive of the State, and the highest legal officer of the State; they co-operate or they do not co-operate in relation to a measure to be carried out. The Attorney-General is placed, then, in a position where, in order to carry out the responsibility resting upon him as the legal representative of the people, and as their elected officer, he is compelled to do that which his oath compels him to do, to give the Executive his best legal opinion, uninfluenced by any partisan or personal motives, which the Executive may or may not choose to follow. In the latter case the question as to who is right or who is wrong comes before the people themselves, and the people of the State of New York have never been slow to correct an evil or defect of ability where it has existed in one of their own elected officers. Such an officer, who has once made a fatal blunder, if I may so use the word, in a public office, will find, when his name is again presented to the people for re-election, that his error is noticed by even the meanest of his constituents. The second argument which is urged by the advocates of this amendment is rather more plausible in its character. It is said "that the Governor needs a cabinet to assist him in administering the government of the State." I offered, as members of the Convention will recollect, this morning, an amendment providing in substance that all these officers mentioned in this first section of this report should be appointed by the Governor. I did it, not with any intention of pressing its adoption, but simply for the purpose of testing the sincerity of the gentlemen who advocate the appointment of the Attorney-General; and I became satisfied after I had offered it that it would not receive even their sanction, and I withdrew it, after having thus satisfied myself of the real state of the case. It is urged that this "cabinet" principle is essential, because the Executive needs personal counsel and support; that his position as Governor of the State of New York is nearly akin to that of President of the United States. Does it occur to the gentlemen who have advocated that theory with great warmth that if that principle were allowed to prevail in this State we should have no limit of appointive officers? Has it occurred to any of them that if the Governor of the State of New York appoint an Attorney-General he might as well appoint the judges on the bench, and upon the same principle, the mayors of cities, and every officer down to the smallest clerk who fills any office whatever in the State? There is no real parallel between the State of New York and the United States government. The one is, like that of its sister States, a separate, distinct community. Like the stones which compose a mighty arch, each State in the Union subsists under a specific, particular, local government, each radically differing from the other in many important particulars, but all alike

in symmetry, and the United States government itself, like the keystone in the arch, or main stone which holds the entire fabric together, is the crowning point of the whole structure. It is entirely unnecessary that either in shape or in form, any of the individual stones which compose that arch should be moulded precisely in all details like the main stone of the arch. Nay, more; any such unnecessary change of form or shape as that would vitiate the beauty or grandeur of the structure itself. Now, if the Governor of the State of New York, at any time, needs impartial legal advice of its highest law officer, who is unquestionably capable of giving it, what is there to prevent him from applying to the Attorney-General, who, like himself, is the mere servant of the people? The Governor has undoubtedly the right, and he may exercise it the same as any private citizen, if he distrusts the opinion of the Attorney General, or if it does not concur with his own views, to retain some private counsel, some reputable member of the bar, and obtain from him a written opinion, and base his conduct upon the line of legal opinion which has been delivered to him by that counsel. It is unnecessary that the opinion of the Attorney-General should be invoked in every instance to the aid of the Governor, in order to prevent that functionary from committing flagrant legal errors. There is a presumption—I do not think it is entirely a presumption—that the Governor of the State of New York has some personal ability, but if he has not some personal ability, he has certainly some common sense. It is unnecessary for him, at every instant, to avail himself of the advice of the Attorney-General on matters about which he must unquestionably know something; and if there be a diversity of opinion between the Attorney-General and himself, then it rests upon him whether he will follow the legal advice which has been given him by an officer chosen only to promote the interests of the people, whose servant he is, or whether he will employ private counsel for the satisfaction of his own conscience and the vindication of his course before his constituents. But there is no necessity for the appointment of this board of staff officers or even of the Attorney-General as a quasi cabinet for the benefit of the Governor. If members of the Convention will take the trouble to read the section attentively they will see it provides for the election of all these officers at the same time as the Governor. There is then in reality a cabinet made by this report elective, because by the very terms of this report these officers are to be chosen at precisely the same election as the Governor of the State himself. When the time of election comes the Governor stands on the ticket at the head of it, and all these other gentlemen are elected with him, unquestionably possessing the same political opinions, and undoubtedly of the same political party as himself. It is improbable that any political party having a view to the success of the ticket which they may nominate will put upon it as a candidate for an office so high and important as that of Attorney-General, a man inferior in legal ability and incapable of the trust. I shall consider the question as to the manner in which the people have heretofore exercised their choice

presently. But the third and last argument which I propose here to answer is one which has been made before and was urged before at the time when the question came before this honorable body in regard to the election of district attorneys. It is said "that the Governor will appoint a far better man to the office of Attorney-General than the people will elect to that office." Where, I ask those who support this amendment, is the evidence that the Executive of the State has ever so exercised this appointing power? Are the vacancies in the offices throughout the State which have been from time to time filled by the Governors, evidences of the sagacity with which they have exercised this appointing power? I need not refer to the numberless cases which have occurred, more particularly within the city of New York, from which I am a delegate, where that power has been most shamefully abused by the appointment of improper men to vacancies in high judicial offices; and I need only point to the case of the local commissions which have been the curse and bane of the city of New York for the last ten years as an evidence of the way in which this appointing power has been exercised by the Executive to the detriment and hurt of the people. Who are the men that are complained of here, who have in years gone by filled the office of Attorney-General of the State at the instance and by the election of the people of the State? Ambrose L. Jordan, Ogden Hoffman, Lyman Tremain, the present incumbent, John H. Martindale, and John Cochrane, the gentleman who preceded him in office. Is there a word here to be said against any of those gentlemen as to their capability to fill the office they have held? I speak of them entirely without regard to their political complexion, and I omitted to refer to one of note who subsequently filled the office of the United States District Attorney in the southern district, and who now slumbers in his eternal rest—Daniel S. Dickinson. After such names as these, will it be said that the people of the State are not fit to be intrusted with the election of their highest legal officer? Sir, the people have sent us here not to make a new Constitution; they have sent us merely to revise the one now existing. We are a committee of revision, not a committee of manufacture; not a committee of first instance, but a mere committee of amendment, and the people say to us plainly and unequivocally, unless there be some cause for amendment, there shall be none made. "*Stantem columnam ne prorsus!*" But is it at all probable that a Governor, who himself holds his office for merely a limited period, and by virtue of a political power and majority, will select a man solely with reference to his legal ability? Is it not much fairer to suppose as a matter of principle, that the man who by statute is charged with a solemn duty, to represent the people in all their courts, who stands prominent with that terrible responsibility resting on his shoulders, and the people of the State as the immediate power to which alone he is responsible, will be far more careful of his action than a man appointed by a fellow-servant of that people. The farther removed an officer is from the people

the less of responsibility there is. The farther away from the people you take the power of appointment, the less of responsibility there is on the person who fills the office secured by an appointment. Now, the Legislature of the State of New York have conferred upon the Attorney-General very grave and very serious powers, the enumeration of which would take time I do not propose to occupy, because I do not wish to trespass upon the patience of the Convention. In the first place the Attorney-General has the power to prosecute all suits in the name of the people. In the next place he has the power to manage and conduct certain suits of the people at the instance of the Governor, when specially requested by him so to do, apart from the general discretion vested in him by the first section of the statute. In the next place he is charged with the prosecution of those who shall infringe the laws of elections, and those who shall be guilty of bribery. It is made his peculiar province to prosecute that class of offenders. In the next place he has the power to collect debts which are due the people of the State of New York. He has the power to collect moneys due and penalties forfeited to the people of the State, and he is compelled by law to pay those over to the Treasurer of the State. He is authorized to employ additional counsel when he requires their professional aid, and he is also authorized to appoint a deputy in case his services are required. Yet, in the face of all these duties, it is urged that the Attorney-General is to be appointed by a Governor mainly to act as his private counsel, is to be degraded from the office which he holds, and is to be made the mere creature of a partisan or personal appointment! I hope, Mr. Chairman, the amendment of my colleague from New York [Mr. Duganne], will not prevail.

Mr. E. A. BROWN—It would seem from the remarks that have been made on the pending question that there was a diversity of opinion in this Convention as to what is really the true theory of our government; whether the legislative and executive power are combined in the individual head of the Governor, or whether the source of power, as we have been long taught, really remains in and among the people; whether a single individual, either by inheritance, by election or in any other way is vested with the supreme power. I say the question seems to be made, whether an individual head, by whatever name called, or however he is vested with power, is not after all better qualified to secure good government for the people, than the people themselves are, to provide that government for themselves, through their laws and through the election of their own officers by themselves. I had supposed sir, and such is largely the theory of the Constitution under which we have lived for the last twenty years, and in a great measure for the last ninety years of the existence of our State government, that the people are the proper repositories of power; that it was from the people that power was to be derived, and that the agents for its exercise might properly be designated by them from time to time and for such periods, and to be vested with such powers as they, in their wisdom might prescribe. Now sir, I have an objection to

making an exception as to the office of Attorney-General, as I had an objection to the exception proposed a few days ago as to the district attorneys, that is higher and beyond the mere question of the election or appointment of these two officers. It is the principle whether high officers of the government, intrusted with great powers, clothed with heavy responsibilities, cannot be and ought not to be, as a general rule, selected by the people themselves, and held responsible to the people themselves for the manner in which they exercise these powers. We are told that it is *cant* for gentlemen who argue before this Convention—a mere creature of the people—mere agents of the people sent here to discharge duties for the people—that these high officers of the government should be selected by themselves, held responsible to them, at short periods, for the manner in which they discharge the high trusts which have been reposed in them. And gentlemen's nerves are so delicate, that they have listened to this kind of argument until their stomachs have reached the point, "*ad nauseum*." Sir, it is sickening to some of these gentlemen to refer to the fundamental principle of all American governments, that the source of power is in the people, belongs there, and not only so, but the people themselves are held to the high responsibility of maintaining these powers and exercising these rights and privileges as free citizens of great States. I say they are held to this high responsibility by the present generation and by the millions of future generations to come after them. *Cant*, sir? It is flattering people! Why, sir, if you go out among the people that sent you here, you will find they understand, quite well, what you have been doing here, and they can tell you as distinctly what you have been doing here as you can tell yourself. They understand what is going on; they regard this Convention simply as their agent for the discharge of high public trusts and to frame such a Constitution, or amend the Constitution in such a way as to preserve the powers, liberties and institutions of the people, and to preserve all their great interests, and perpetuate and transmit them to the future. I do not regard it as humiliating to refer to the people of the State. I think gentlemen will find in the end, that the people of the State of New York are an essential element in the making of Constitutions, in adopting them and carrying them into effect. Now, sir, in regard to this matter of the Attorney-General. The Governor, it is assumed, can better select the Attorney-General than the people of the State can elect him, that the public interest will be promoted and the general good enhanced by conferring upon the Governor and Senate and taking the election of that officer from the people. Is not that what the gentleman from Onondaga [Mr. Andrews] and other gentlemen mean? They propose a change in the Constitution on this subject. Why change, unless it is to get a better provision hereafter than that which we have heretofore had? We had for twenty-five years in the history of this State government the Attorney-General and other State officers appointed by the Senate and the Assembly. I am not aware that we ever had them appointed

by the Governor and Senate. The Council of Appointment had this duty previous to 1821. The Council of Appointment was complained of as a corrupt body. Fault was found with them in those days, growing out of the manner in which they discharged their duties in the appointing power in this State in regard to a great many officers of the State. And, sir, the Legislature were complained of as not being entirely unspotted and pure in selecting the Attorney-General and other officers of the State. So it was changed in 1846, and for twenty years it has been said, and in my judgment said truly, that the duty has been well discharged by the people of this State, in the selection of officers, Attorney-General as well as Secretary of State, Comptroller and other officers of the State government. Hence it must be, if the change is necessary, no complaint having been made, that I ever heard of, as to the manner in which the people have discharged that duty, and it is assumed that by the placing in the hands of the Governor and Senate the appointment of those officers, you place it in better hands than those in which it is now placed. I deny that proposition; I deny it as a historical fact, or that any well considered argument can be found to show that the Governor of this State can better appoint the Attorney-General than the people of this State. But gentleman allude to Conventions, and say that officers are nominated by them—by party conventions. One gentleman says you must take one of two candidates. It is not very long ago that the people had the choice of three different candidates. I do not know but they were all good candidates. I recollect on several occasions of attending to aid in nominating gentlemen to the office of Attorney-General; and, sir, conventions are so discreet, and the people who select the delegates to the nominating conventions are as capable, as honest, and as discreet in regard to the office of Attorney-General, as they are, or have proved to be in regard to the office of Governor. Is it not so? Can any gentleman state a single fact to show it is not so? Can they present an argument, or refer to a historical fact, to show why it is not so? The best lawyers in the city of New York and in the county of Kings, and in the whole State, have been willing to become candidates for Attorney-General. I have several times voted in a State Convention for a gentleman now present for Attorney-General, a gentleman from Kings. The best lawyers there are in the State are willing to be taken up by State Conventions and nominated for the office of Attorney-General. Are they any more willing that the Governor should make the selection, and do they claim that the Governor may or will be likely to make a better selection. I deny that any such thing is true, or ever was true, or ever can be true. You, sir, as competent to designate an Attorney-General as any Governor who ever sat in the Executive chair of this State. The State conventions that you attend are as competent to select as any body on earth to make a proper nomination to be submitted to the people, and I take it upon myself to say that they (the nominating conventions) are as honest in their purposes as any equally large body of men, as a general proposition, taking them altogether.

But, sir, it is said that the Governor is so peculiarly circumstanced that he needs a confidential friend and adviser by his side, in the person of the Attorney-General. For what purpose under Heaven, sir? Is it that he may properly consider the question as to the exercise of the veto power? Has not the Governor the right to send for the Attorney-General, or to send any bill proposed to be passed, to the Attorney-General for his legal opinion? Does he want the unbiased, the honest, the well-considered legal opinion of the Attorney-General, upon his responsibility as the chief law officer of the State? Is that what the Governor wants, upon which to base his action, to aid him in the discharge of this important executive duty? Is there anything under Heaven in the way of his calling upon the Attorney-General for this service, whether he belongs to the same political party or not; whether he is appointed by the Governor and Senate or elected by the people? Does it make any manner of difference under Heaven, with regard to the Attorney-General in the discharge of his duty properly and honestly, how he has been elected? If the Governor desires this service, he is entitled to it, whether the Attorney-General be his political friend, his personal friend, or otherwise? It is his duty to give the Governor the best of his legal learning upon the subject on which his opinion is desired, and more than that the Governor cannot ask, and less than that the Attorney-General has no right to give. It is said that the pardoning power is an important item in the discharge of executive duty. So it is, sir, and in regard to that, if the Governor needs a private amanuensis, a private person to aid him in the discharge of that duty, he has his private secretary by his side to call on every district attorney in the State who may know anything on the subject, and to call upon the judges of the courts, who know anything on the subject, and to call for any other information he may desire. The Governor has his confidential friend and assistant in the person of his private secretary by his side to discharge all such duties. Does a legal question come up on which he does not feel entirely satisfied himself, is not convinced by his own examination or satisfied of the accuracy or fullness of his own information, or the correctness of his own legal opinion, so far as a legal opinion may be involved in the question of pardon, what is there to hinder him from calling on the Attorney-General of the State in his official capacity and on his official responsibility for such an opinion? Is it necessary for him to be appointed by the Governor, that he should be on intimate political or personal relations with him, that he should be under great obligations to him for his office, in the first instance, and for his retention in it afterward? Why, certainly not. He is entitled, as I said before, to the full benefit of all the legal learning of the Attorney-General in this particular instance. He is entitled to have it, and it is the duty of the Attorney-General to give him that. More than that he cannot ask, less than that the Attorney-General cannot give, and so through the whole catalogue of cases of questions in relation to which the Governor may properly call upon the Attorney-General for aid or advice. Sir, I do

not see any necessity of having the Attorney-General, as seems to be the opinion of the honorable gentleman from Albany [Mr. Cassidy], under the control of the Governor. He says he is not controlled by any one. He is "*nullius in filius*." He stands right out in his official capacity, elected by the people, held responsible to the people as to the manner in which he discharges his official duty, and he will be likely to be uninfluenced by any improper consideration as to the opinion which he should give in any particular case. He is not biased by the consideration that it is his special friend to whom he is to render this official opinion. Sir, it is an argument strongly in favor of electing this officer by the people, that he is thus independent of every one and every influence, and goes forth and discharges his duty under this high responsibility to the people, irrespective of his personal relations or responsibilities to the Governor himself. Now, sir, I am opposed to this whole system, to this attempt by piecemeal to do away with the fundamental principles of the government of this State. That power comes from the people; that high officer of State should be elected by the people, and by them held responsible at all times. Should you take away the election of the Attorney-General, then you may take away the election of the Engineer and Surveyor; and the proposition of the gentleman from New York [Mr. Gerry] to make all these officers appointive by the Governor and Senate was much more reasonable and homogeneous than selecting out this one single officer and leaving the rest to be elected as heretofore. Then you would get a State government not entirely incongruous one part with the other. But here you have the people electing one State officer, the Governor and Senate appointing another, and I do not know but what it would be left to the Legislature to appoint another, making it an entirely incongruous, unstable and unsatisfactory form of State government, a government based on nothing uniform or homogeneous. I am against the whole thing. I am in favor of electing the Governor and Lieutenant-Governor, and the other State officers, and I am not afraid, as the honorable gentleman from Westchester [Mr. Greeley] seems to be, that the paper ballot will be too long and have too many names upon it. It is a part of the system of our State government, and the system, as a whole, should be preserved. And, sir, without repetition, I find that in regard to this particular office, gentlemen support this proposition to appoint the Attorney-General, who will come here by and by with other propositions of a similar character to give to the Governor and the Senate the appointing of other and important State officers; but with regard to that I will speak when the time comes; but at present I deny that there is any reason why the Attorney-General should be selected out and be appointed differently from the Secretary of State, the Comptroller, and the Treasurer, or any other officer. The people are abundantly competent to select all these officers and abundantly competent to see that they are at all times held to a sufficient and thorough responsibility to the people from whom they receive their high trusts.

Mr. HALE—I did not intend to take part in

this debate, but I have heard so often the charge made, that those who support this amendment were guilty of a distrust of the people, and of a distrust of the principle of popular government, that I feel constrained to say a few words to put myself right upon the record upon that question, inasmuch as I claim to be as ardent a friend of popular government, and to have as much faith in the people, as any delegate upon this floor, from wherever he may hail. The question is presented, as I understand, from the statements made by gentlemen here, whether the advocacy of this proposition shows any distrust of the people? I say, Mr. Chairman, that it does not. I say, upon the other hand, that the fact that we in framing a Constitution here, which will amount to nothing unless it is ratified by the people, are willing to put into it a provision which can give rise to this clamor that we are depriving the people of their rights—that we are willing to go down to the people with this Constitution, and go before them with this provision, and ask them to support it, is pretty good evidence that we do not distrust the people. I believe that the people have capacity enough to see through what I cannot but characterize as the miserable folly of this talk that we are "trenching upon popular rights," because we do not propose that we, the people, shall vote directly for every man who is to perform any act as agent for the people. I am willing to go before the people of my district upon that issue, Mr. Chairman. And I have no sort of doubt that my constituents will say, upon this subject being presented to them, that they prefer that the first law-officer of the government shall be designated in some other way than by popular suffrage. What does this assertion amount to about what the people demand. In the first place, who are the people? Gentlemen get up here and talk as if the people were some distant body that was looking in upon us, and ready to devour us unless we take a certain prescribed course. Why, Mr. Chairman, I take it *we* are a part of the people ourselves. I claim to be one of the people. I do not know of any people except the body that I am a member of, of the voting part of which, in this State, I am about the one-eight hundred thousandth part. Now, let gentlemen take this home to themselves. Do gentlemen think, on this floor, that they are defrauded of their rights if some agent of the people is to perform his labor without having had the sanction of their votes? Why, if this principle is good for anything, if there is anything in this loud talk that we hear of the people's rights in this matter—if the people have a right to vote for this officer, they have a right to vote for every officer, and not only for every officer, but for every agent of the public. A capitol is to be built in this city, we suppose, in the course of years. An architect will have to be in some way designated for the construction of that capitol. Is it necessary that the people of the State of New York should vote for him? Have you got to canvass this State, and must the man who gets the most votes for architect be designated to draw the plans and superintend the building? Every State department here has important clerks. Does anybody propose that the election of these clerks shall be

by the people, and that they shall not be designated by some agents of the people? I concede that the people are the source of all power. This architect is to be designated by the people, but not by direct vote, but by men who hold their positions directly or indirectly by the election of the people. They are the source of power, but the eight hundred thousand men who are entitled to vote in this State do not claim the right to vote for every one of these agents and servants. It is not right that they should; it is not expedient that they should have the right to vote upon the designation of every man who is to do any act for them in this State. Now, what is the principle upon which a republican government is formed? How far must you exercise this elective principle in order to have a republican government? How much can you limit the elective principle without trenching on the principles of republican government? These are the questions before this committee. In the first place the people must have the election of the men who make your laws. Your Legislature must be composed of the representatives of the people, and elected directly by the people; we shall all agree upon that. That is the first principle of a republican government. The people make their laws. They make them through their representatives, and these representatives are to be voted for directly by themselves. We go further than that. Under a democratic republic the people have the right to vote for and appoint their chief executive officer, the man who is the head of the nation; that is the distinction between a monarchy and a republic, and no one claims here, no one argues that the people shall be deprived of the election of their chief magistrate. But when you go beyond that, Mr. Chairman, it is simply a question of expediency, and not a question of principle. When you go beyond the designation by popular suffrage of the representatives of the people, and a chief executive of the people, then, although you provide for the indirect appointment of this officer by the people, you do not trench upon popular rights. Why, the gentleman from New York who spoke last on this subject [Mr. Gerry], a gentleman whom I am always pleased to hear on this floor, alluded in his remarks to the office of judge, and he said, "why, if the people have not a right to elect their Attorney-General they have not a right to elect their judges." Now, Mr. Chairman, there is only one question now before this committee, but if I understand the sentiment of the thinking and intelligent people throughout the State, there is very great doubt whether they think that their judges ought to be selected by election. Although I deny that it is necessary, because we provide for the appointment of an Attorney-General, that we shall also provide for the appointment of judges, still I deny that there is anything incompatible or inconsistent with a republican form of government in providing that your judges shall be appointed instead of elected. I think that if the members of this Convention could express and would express, honestly and fairly, the sentiments of their hearts, you would find the majority of them saying that, as a matter of right, as a matter of principle, as a matter to secure the good administration of

the laws, it would be better that our judges should be appointed instead of being voted for directly by the people. As I said before, if those gentlemen are right in their accusations, charging a design to trench upon the popular rights and deprive the people of their rights against those who advocate this proposition, then there is no official duty performed by any agent of the government in this State in which a similar right does not exist, and we are guilty of defrauding the people unless we allow them to vote for the architect who shall build the Capitol, to vote for the clerks in the different departments, for every officer, or person who acts for the public, I do not care how humble, although he be the man who has charge of this Capitol, or the man who sweeps out this hall. There is a limit, and what the limit shall be is a question of expediency. Men have no right to accuse us of a distrust of the people or design to trench upon popular right, because we are advocating the appointment of this officer. I take it no one says upon this floor that this rule can be applied to every officer who is a public agent. You have got to stop somewhere. If you elect your Attorney-General, and elect your judges, I take it that they will not insist that you must also elect their reporter or the crier of the court. I never heard it insisted upon that the clerks in the departments should be voted for. Now, is there anything in this office of Attorney-General (and that is the practical question before this committee), which renders it more appropriate that he should be designated by the Governor than that he should be elected by the people? I do not want to argue this question by going into an examination of the personal character and qualification of the different gentlemen who have held this office in this State. That is an argument to which one never can reply, because it is never pleasant to discuss the merits or qualifications of our contemporaries in a public body like this. But I will venture to call the attention of this Convention to the character of those who were Attorney-Generals in this State before 1846, and I think I can safely claim that they were quite equal to the gentlemen who have held that office since. Setting aside this, and passing over this comparison of characters and qualifications of those who have held the office of Attorney-General, let us look at it as a matter of principle, as well as a matter of practice, which of these systems is more likely to secure men who are qualified to perform the duties of this office. What are the duties which the Attorney-General has to perform? I shall treat this part of the subject very briefly, for other gentlemen have very fully argued it. In the first place, he is the legal adviser of the Governor of this State. The gentlemen who have talked upon the other side have mistaken the arguments upon that branch of the case. They have spoken of him as a "private counsel." It has not been claimed that the Attorney-General was to be "private counsel" to the Governor; but he is by law his legal adviser, and every gentleman must know, it seems to me, that in the performance of his official duties as chief executive of this State, it is very desirable that his confidential legal adviser, so made by the law of the State should be a man in whom

he himself personally has confidence. I think there is no gentleman here who would like to fill the office of Governor of this State or the chief executive of this Nation, with an Attorney-General whom he knew to be bitterly opposed to him politically or personally, and I consider that a legitimate argument, in favor of the appointment of this officer by the Governor, of the State. I consider it a strong argument and one which has not been answered and in my judgment, cannot be answered. It certainly cannot be answered by any sneer about "private counsel," or by saying that if a Governor is a man of ability he will seek able counsel. It is the business of the people of this State to provide him with a suitable legal adviser, and in my judgment the only way that they can do so is to give him the power of his appointment. The next office that he performs is that of representing the people of this State in the prosecution of criminal trials, and in defending claims against the State. And here I claim that the Governor, having the sole responsibility resting upon him, is much more likely to select a man of such standing and reputation, of such known ability, that he will fill the office creditably to the Governor who appoints him, and the State, than is a nominating convention, for I claim that this is not a question between the people on the one hand, and the Governor on the other; it is a question between the appointment of this officer by the agent of the people and by a nominating convention; and it is inevitably so, for the reason that the people of this State, but a small portion of whom are in the legal profession, and fortunately but a small portion of whom are engaged in litigation, are not acquainted with the men who are nominated, or their reputation or standing. And it is no insult to their intelligence and capacity to say, that the people are not acquainted with the comparative legal ability and capacity of the different lawyers in this State. They vote according to their political affinities. If the republican convention nominates a man for Attorney-General, republicans vote for him. They take him because he is nominated by the convention. The democrats of the State vote for the democratic candidate for precisely the same reasons. And, as was well remarked by the gentleman from Kings [Mr. Van Cott], the people of the State are in that way limited in their choice to the two men who are put in nomination by the conventions of these two great parties. Any man who votes for a third person, although he may know his own candidate, although he may be satisfied that both of these men nominated are unfit for the office, still, if he votes for a third person, he very well knows he throws his vote away. Is it not true, as claimed by the gentleman from Kings [Mr. Van Cott], that this agent of the people, this man whom they have elected as their chief executive officer, can exercise much more freedom of choice, that he has much more scope, and will be much more likely to designate a suitable man, than the people directly, whose choice is necessarily thus limited and confined to two men, and one or the other of whom they must take? It seems to me the proposition is too plain to require argument. But how are these conventions constituted? I

am free to confess that I do not know, for I never was in a State convention of any kind, except this august body which I am now addressing. But if reports are true, if what we occasionally hear from those who are our neighbors, who do attend these bodies, which meet from time to time at some hall in Syracuse, or in Tweddle Hall in Albany, it is not the place where merit is surest to be recognized. Unless we are very much misinformed, there is very often such a thing as a packed convention. There is very often such a thing as a nomination made by these conventions that is not fit to be made. I admit that that is not an argument against election of officers in all cases. It is one of the evils of a republican form of government. We have sometimes to take a Chief Magistrate in that way, not one whom we would desire to select. But when you come to officers of this kind, where peculiar qualifications are required, of which the people at large are not supposed and do not claim to be qualified to judge, then I say it is a good argument against the putting of men in such places by nominating conventions, and I am in favor of the system of appointment. Now, I have already stated, Mr. Chairman, that it was no insult to the people, and it was no disparagement of the people to say that they were not acquainted with the qualifications of men who are nominated at these Conventions. I will name another office to illustrate, by way of example. Among the officers we have been in the habit of electing, are Canal Commissioners. I would like to know how many gentlemen upon this floor, when they vote every two years for Canal Commissioner, have the slightest knowledge of the qualifications, for that position, of the gentlemen for whom they cast their votes. I must confess, for my part, that I have never had, although I have voted for this officer a great many times. I have always done so blindly, for the reason that I had no means whatever of knowing what the gentlemen's qualifications were who were nominated for that place. If I took one of the papers published in the city of Albany, I would probably find that the gentleman nominated by the republican party was residing in the canal region, that he was in the "canal ring," and was familiarly known as a "canal thief," and a great many other disparaging things about him. If I look at the columns of another paper published in this city, I find the gentleman nominated by the democrats possesses the same disqualifications. He is supposed to be in the "canal ring;" he is called by these papers a "canal thief." I am not speaking of any one in particular, but of the allegations which are frequently made in the papers against one party or the other. Is it any privilege for me to vote for the Canal Commissioner? If it is, I am free to say I do not know it. I am so ignorant as not to appreciate this inestimable privilege I enjoy of putting a ballot every two years in the box for Canal Commissioner, and I am willing to abdicate in favor of any individual who wants my place. I do not think it any privilege whatever. I think the Canal Commissioner could be quite as well selected if I had "no finger in the pie," and I think the people of this State feel about the office of Attorney-Gen-

eral precisely as I do about the office of Canal Commissioner, and that the people of whom we are a part, would feel no more injured to have the Attorney-General appointed by the Governor of the State, than I would by having some competent officer who was acquainted with the subject and nominated with the candidate, say who should have the care and superintendence of canals.

Mr. CONGER—In the palmy days of the republic, a decent respect for the Constitution of the United States, and the Chief Magistrate of this republic was supposed to be a primary qualification of a good citizen. You and I, Mr. Chairman, as we insensibly sometimes revert to the days when we sought instruction at the hands of wiser men, both as to the Constitution of the land, and the structure of the government under which we live, would do great injury to the unsophisticated feelings of our youthful days, if we should deny here or elsewhere that we were possessed at that time with the most unbounded devotion to the fundamental law of this republic. But I sometimes feel, sir, as if the sentiment of the people on these topics was undergoing a change, and that you and I, sir, have fallen upon disastrous days. I cannot shut my eyes to the fact that here and elsewhere there is a growing disposition to trample under foot the organic obligations and covenants of the great people of these United States. I do not wish to allude to what has been said on this floor by way of criticism, but I will confess that when I heard the Chief Magistrate of this republic denounced to-day in unmeasured terms, I felt as if something had been uttered in these halls which the people of this commonwealth could not in their sober moments approve. What do you suppose was my astonishment when I found in the journal of the day in a letter written by a man sustaining high relations to the councils of this republic, a leader in the House of Representatives, a sentiment of this kind:

"Some of the members of the Senate seem to doubt their power under the Constitution which they have just repudiated, and only outside of which they all agree that we are acting, else our whole work of reconstruction was usurpation."

I do not allude to this at this time, Mr. Chairman, for the purpose of drawing into this arena any new discussion of the questions which vex most the party in power in this country. I leave to them, as it is proper, the adjustment of that unfortunate difficulty which has sprang up in their ranks, and leave to history to settle finally the disposition of the question which has been started, whether the Chief Magistrate of this country and his cabinet have deserted their party, or whether their party have deserted them. But what I do wish to allude to at this time is the growing disrespect for the Constitution of the United States. It seems to me that if this sentiment should prevail throughout the body of this people, then we might as well conclude that our advent here was under most unfortunate auspices, and that all we could hope to do, in the securing of a greater regard upon the part of the people for any Constitution as a bond of covenant and good faith for them, is to be a work of supererogation. Also I may say, I was a little disconcerted this morning

when I heard in the course of this discussion, sir, that there was no provision in the Constitution of the United States by which the Chief Magistrate of this country was empowered to select his cabinet officers. That was new to me. I think it must have been new to the Convention, for although these officers may not be severally named or designated in the Constitution, they are, as a body, specifically mentioned as subject to the authority and the appointing power of the President, and in terms clearly and distinctly conferring upon him the power of designating those officers, and fully authorizing his supervisory control over their actions. There is nothing more plainly written on that instrument than the power of the President to require in writing the opinion of all the heads of the executive departments of the government, on any subject relating to the duties of their respective offices, whenever he desires their opinion; nothing more clearly implied than that they are subordinate parts of the Executive power which is vested in him. And I presume, sir, that this original right of the President, granted by the founders of the Union, of having chief assistants and of requiring such written opinions, implied as a matter of course consultation in person on any important topic. Thus naturally has arisen the established methods of government since in practice. It was frequently found to be more convenient for the President to get those opinions orally and more convenient for his chief officers to give them orally, than to furnish them in writing. But not to trace any further the origin of the cabinet and its relation to the President, you may probably infer from the tenor of these remarks that I incline almost of necessity to this doctrine, that the head of every administration in every State, as well as in the Union at large should, if in the States it were an open question, have a cabinet council, and that this is a necessary attribute of the power and adjunct to the functions of the Chief Magistrate in the proper discharge of his high duties and the just interpretation of all the vexed questions that are constantly to be met by him. Now then, sir, in such days as these, the question recurs, is there faith enough in the model of the United States government for us to go back, to retrace all the steps which we have made, as a separate and independent sovereignty, to go back, I say, away back beyond the earliest times, and give the Governor the appointing power of his cabinet? If the experiment is practicable at the present time I am primarily for it. But the question is, and it is an important question, whether that experiment can succeed. Sir, under the Constitution of 1821, the chief officers of the State were appointed by the Senate and House, either by concurrent vote or on a joint ballot, and it is almost unnecessary for me to remind you that under the present Constitution these officers are elected by the people. Now, Mr. Chairman, the practical difficulty has been this, that when the Governor took his seat here in Albany, he found a set of State officers a year in their seats in advance of him, and being subject to the political vicissitudes of the time, he might be favored with a new set perhaps diametrically opposed in politics to him, coming in after he had

been one year in his seat. That has necessarily, and in fact historically, during the last twenty years of the administration of this State, produced a diversion in State policy and a division in State councils. So that the Governor was practically here in Albany placed in the executive chair with insignificant power, more as a puppet than as a living administrative head of the party which put him in power. But gentlemen are inclined to say that we need no administration in the State; that there is no necessity of having our political affairs so arranged in the State that the heads and the leaders shall be responsible to their parties for the wise conduct and administration of their interests. Why, if that be true, then gentlemen mean simply to say that we must either have no policy at all, or as has been quoted by the gentleman from Albany [Mr. A. J. Parker], the policy of the State must be entirely subordinate to that of the general government. I do not think it the part of wisdom to adopt any such theory as that. The people, when at certain intervals they demise this power and repose it in their representatives under the Constitution, and for the time being desire to be left alone, that they may attend to their own business, and they wish all the power and all the wisdom in the administration of their affairs committed to and concentrated in the men that they elect. And they also require of them that they should act intelligently as well as honestly, for it is not simple honesty that in times like these can save an administration or save a party from ruin and overthrow. And when I talk of a party in this way I am speaking of it in the highest sense in which the term can be used or applied, for there is no safety whatever to our free institutions, and there is no admitted possibility of good under any constitutional government unless the power of the State is nicely balanced between two great parties to whose representative heads the sovereignty and the care of the interest of the commonwealth is from time to time committed. Therefore, sir, to have a good government we must have a good Governor, clothed with all adequate power. To have a wise government we must have all the adequate means for producing such a result. We must not call the Governor here to Albany and put him in the chair and let all the outside elements laugh him to scorn. Therefore, as I said before, if there be any earthly possibility of giving the Governor any cabinet which he can appoint, I am primarily for it. But when you come to this matter, on this motion especially before you to-night, to give the Governor the appointment of the Attorney-General, if it is meant by that that the Governor is to have an Attorney-General for his sole cabinet officer, I would just as lief see and constitutionally maintain, strutting about the Capitol yard here, a hen with one chicken. Sir, it is a monstrous incongruity to tell the Chief Magistrate of this State that you will give him power to select his legal adviser and so make for himself a cabinet. The Governor of the State needs to be advised on many other things pertaining to the public weal than such as are brought up merely for judicial investigation. Now, sir, if it were possible that this committee could so alter and amend the proposition which

has been suggested, as either to make the Secretary of the State and the Attorney-General appointed by the Governor by and with the consent of the Senate, or if the elective principle is to prevail, and I do not care a snap which is to prevail in this regard so long as the great principle which is to be attained is concerned, and you elect the Secretary of the State and the Attorney-General at the same time, at the same election and on the same issue, when and on which you elect the Governor, I will take either method to be *prima facie* evidence that the Secretary of the State and the Attorney-General are to constitute his Cabinet. You will then correct the great mischief which has fallen on us ever since the adoption of the Constitution of 1846, by which the Governor was to go in at one time, while the leading State officers would go in at another. If I can understand the feeling of this house, if I can understand the minds of the people, if I can understand the interpretation which is wisely to be given to the powers which we are to assume, then I think, sir, looking upon the whole policy of this State, from the early Constitution of 1777 down to the present time, that while we may follow to some extent the Constitution of the United States as a model, the people of this State desire still to reserve to themselves some direct and special power in saying who shall be the cabinet council of the Governor; and if that be so, then the best we can do here is to make the Secretary of the State and the Attorney-General elected on the same ticket with the Governor, necessarily of the same political complexion, guided and animated by the same principles which bring the Governor into power, and the best warrant that the people can have that they will have united counsels in public affairs, and some reasonable hope that before the Governor is a year in his seat, his administration will not be declared an utter failure. At the proper time I shall move to amend so that the office of Secretary and Attorney-General shall go together. I feel obliged to delay the committee just one moment to say this; Whatever we do we must remember that consistency is a jewel. We must see to it that we not only form as proper an organic compact as we may, but also that it be one in its spirit and influence, in its motives and in its results. It will not do to go down to the people and tell them you will not let the supreme court or the county court appoint the district attorney, but you demand that the Governor shall appoint the Attorney-General by and with the advice of the Senate. There will be no consistency in any such proposition as that. For the district attorneys are as much the law officers of government within their proper sphere as the Attorney-General is for the whole State. The principle which animates the appointment of the one should determine the selection of the other, and, to be consistent, we must either revise the vote by which we make these officers elective, and allow them to be appointed by the county courts or the general term, or we must now refuse to make the office of Attorney-General appointed by the Governor, with the consent of the Senate.

Mr. FERRY—Inasmuch as I expect to vote for

this amendment, I wish to show that I do not do it because I have any disrespect for the people or the will of the people. I believe that the power in this government should come from the people. We have a government composed of the legislative power, the executive power, and the judicial power. Now, I believe the legislative power should originate with the people, and that they should vote directly for the officers who make the laws for this State. The executive power should also reside with the people, and they should vote directly for the executive officers, and yet I am in favor of this amendment. The chief executive officer of this State is the Governor. He is elected by the people. Now, the question for this Convention to decide is which is the most proper course, what is most expedient to do to effect a proper execution of the laws? Will you make the one officer that you elect, a Governor, responsible entirely, and trust the execution of the laws to him alone, or will you elect aids for him? He cannot do the business alone. Now, if the Governor (I submit to all the members of this Convention here, all who advocate the interference of the people in this matter), if the Governor could execute the laws alone, no one would think of having anybody else, either by electing any one or appointing any one to aid him. The execution of the laws involve duties so complex and multifarious that no one man is able to execute them alone, hence we look about to provide aids for him. Now the question arises for the people of this State to consider in what way will these laws be best executed, and this question we are called upon to decide as representatives of the people. We claim also to make a part of the constituency, and when we conclude that the people will get a more perfect execution of these laws by making the chief executive officer responsible to them, and let him select his own agent, I assert, we may do that without being charged with any disrespect for the will of the people. To illustrate, we will suppose some man of business to be about performing some important piece of work. For instance, the erection of costly and extensive buildings. He makes choice of an architect, and the question arises, will that man, when he knows the architect cannot perform the business alone, make choice of his aids himself, or will he say to that architect, "go on and choose your own subordinates, and I will hold you responsible for the execution of this job to my satisfaction." Now, then, the people of this State may take the same view with regard to the execution of the laws of this State, or we may do so, acting as their representatives, and we may conclude to put the entire responsibility upon the Governor, without justly incurring the charge of disrespect to the people. It is simply a question of expediency. There is no disrespect in it, and I object to being put in a false position by any man who claims to be the special friend of the people. I say the executive power should reside with the people, and the executive officers should be elected by the people, and the only question is in what way shall this duty be best performed. Now, we who vote for this amendment believe it is better to make the chief executive officer responsible to the people for the entire execution of these duties

than it is to emasculate that officer and divide the duties of the office, and thus have a divided responsibility. With respect to the Governor, I would advocate this amendment or the principle of respect for that officer. Make him what he purports to be—the executive officer of the laws of this State; and when I say so, I do not by any means entertain any disrespect for those who advocate different views; but I say that, as a question of expediency, I believe my plan is the best. I did not rise to discuss this question upon its merits, but simply to show that those who advocate and will vote for this amendment can do so without being charged with disrespect for the people. The gentleman from Essex [Mr. Hale] so well said much that I desired to say, that it is unnecessary for me to add anything further except to illustrate my views of what is demanded by a sincere respect for the sovereignty of the people. Now the committee who made the report we are considering will not be charged with intending disrespect to the people, yet I will call attention to some provisions in this very report which I say are liable to this criticism, and I claim that it shows a want of confidence in the people, and if no one else at the proper time moves to strike them out I shall do so. I allude to the provisions which prescribe the qualifications of the Attorney-General and State Engineer and Surveyor—assuming these officers are to be elected by the people—then I say I object to the restrictions upon the power of the people to judge of their qualifications. I say that when you enact the people shall not elect any one as Attorney-General unless he shall have been a counselor-at-law resident in this State for ten years, you fetter the action of the people. Here is a case of clear distrust, and I ask, why do you distrust the ability of the people to judge in this matter? Why do you not leave them free and unfettered? Why are you afraid of the ability and honesty of the people in this matter, to judge whether they will have a lawyer who has been ten years in this State, or whether they will elect a man who knows nothing about law. It is a clear case of distrust of the ability of the people. Assume that these officers are to be elected. Then I am opposed to all these restrictions upon principle. I say leave the people to judge of all these matters, if they are to elect these officers. Why should this Convention make an organic law denying these privileges to the people, and why enact that I shall not vote for a man for Attorney-General unless he has been a lawyer for ten years? It is a clear and palpable case where you fetter the people and distrust them. I am opposed to it on principle, while I maintain that this principle is in no sense violated by the appointment of the Attorney-General for the reasons already stated.

Mr. PAIGE—In the discussion of this question, whether the Attorney-General shall be appointed by the Governor or elected by the people, some views have been expressed which I do not comprehend. It has been said if we give the power of appointing the Attorney-General to the Governor, we will express a distrust of the capacity of the people, and will deprive them of their political right to elect him. Neither of these conse-

quences can follow from the delegation of this power to the Governor. We shall not by a proposition to give this power to the Governor express any distrust of the people, or deprive them of any political right. It is a fundamental maxim that all political power is inherent in the people. The right of government is vested in them, and they possess every right, power and jurisdiction which has not been delegated to the United States. They have the right to exercise the whole of this power themselves, personally, or to delegate it, or a part of it, to their agents or representatives, to be exercised in their behalf. We, in this Convention, by submitting to the people, for their ratification or rejection, a proposition that the Governor appoint the Attorney-General, neither distrust them or impair any of their rights; we propose for their consideration what we regard as a useful provision, to form a part of the organic law. This proposition goes to the people and it is not imperative upon them to adopt it; they have a right to ratify or reject it. This Convention is but a propounding body, it can provide nothing which will be obligatory upon the people without their consent. We simply suggest what we deem would be a useful provision of the Constitution. In relation to the subject of depriving the people of the right of electing their own officers, the people having all political power, can retain to themselves the right of electing all their officers, executive, legislative, judicial and administrative, or if they so determine, they can delegate to some of their agents, the right to appoint some of these officers. If we adopt a provision that the Governor appoint the Attorney-General, and the people ratify it, it will be the act of the people. But the Governor does not want any cabinet. He does not stand in need of any such magnificent machinery in the State government. I can see however, that a confidential, constitutional, professional adviser in the person of the Attorney-General, if appointed by the Governor, may be very useful to him. But I cannot see any reason why the Secretary of State should be appointed by the Governor, and there is no reason why any of the other State officers named should be appointed by him. The Treasurer and Comptroller, who have the management of the funds of the State treasury, should be elected directly by the people. Therefore, the only question is whether the Attorney-General is not an exceptional case. The Governor stands in constant need of professional advice. It is said that the Governor would be greatly aided in the discharge of the duties of his office by having the assistance of the Attorney-General as a constitutional, professional and confidential adviser. I can see no objection to taking the Attorney-General out of the general rule as to the election of the State officers by the people. The Governor stands in need of professional advice in respect to a veto of unconstitutional bills, in the exercise of the pardoning power, in the surrender of fugitives from justice, and in many other cases. It is eminently proper that he should have this advice from the Attorney-General, who, if appointed by him, will consider himself as specially charged with this duty. For these reasons it may be proper that the Attorney-General should be

appointed. But I think there are no reasons why either of the other State officers should be appointed by him. In providing for the appointment of the Attorney-General by the Governor, we are not infringing upon the rights of the people. We simply propose and say to the people, "Are you willing upon principles of expediency that the Attorney-General shall be appointed by the Governor?" If they answer yes, the appointment will be their voluntary act; it will be made by the Governor as their agent or representative. In this there is no disrespect to the people, no calling in question their capacity or their right to elect the Attorney-General. Therefore I am willing to vote for the proposition that the Attorney-General be appointed by the Governor; and I am not willing to vote for the proposition that either of the other State officers shall be appointed by him.

Mr. T. W. DWIGHT—I do not intend to debate this question, but only openly to state my position, and to show the reasons why I most heartily concur in this amendment. What are the duties of an Attorney-General? We sometimes, I think, have connected in our minds with the office of Attorney General as originally constituted some of the special and particular duties which have been imposed upon him in this State, such as the membership of particular boards. There is no necessary relation between those special powers and the office of the Attorney-General. Now if we go to the common law to ascertain what are the duties of the Attorney-General, we find that they are professional; strictly professional in their character. Some of them have been mentioned in the discussions of this committee. But there are others of equal importance to which allusion has not been made, such as the superintendence of corporations, the observation of their management, the careful watching of property devoted to public uses in connection with the charitable institutions of the State. What are all the powers and duties which are imposed upon the Attorney-General? They are strictly executive in their character, they belong to professional men. As has been well said by the gentleman from Otsego [Mr. Ferry] whatever we may say about the people, a true republican government is necessarily constituted by a division of its powers into three great branches, the legislative, the judicial and the executive, and it is impossible for us to carry on republican government and deny that distinction. Now we have certain great functions connected with the management of the executive department. Under the original action of the common law, the executive department was symmetrical in its character. The Attorney-General was the legal adviser of the crown which represented the State, or as we say the people. When there was any great breach of the law, this officer saw that the culprit should be convicted, and the sheriff was the officer of the Executive to carry the judgment of the court into effect. What have we done? We have shattered the executive power into fragments, we have provided that those who ought to have been assistants to the Attorney-General, the district attorneys, should be elected by the people; we have provided that sheriffs, who are properly

branches of the executive department, should be elected, and thus, by a departure from principle, we have made the so-called Executive or Governor almost incapable of carrying out any portion of the true executive duties. It may be too late for us to claim, at the present time, that sheriffs should be appointed. It has been pronounced by this Convention too late to claim that district attorneys should be appointed; but there is one thing that we may do—one thing that remains properly for us to do, even if we give up those other things, that is the appointment of the Attorney-General. I do not go so far as the gentleman from Rockland [Mr. Conger] who substantially holds that because we cannot save everything, therefore we will not save anything. If I can save the appointment of the Attorney-General I will, although I believe true principle and theory require that the Executive should have a symmetrical character, and that the Governor should appoint district attorneys and sheriffs also. But, as I have said, it is too late, perhaps, for us to insist upon that, but I still do insist with all my heart on the principle of the appointment of the Attorney-General. I would love to see in the State of New York some dim reflection of those great names that in English history have illustrated this office of Attorney-General—such men as Lord Mansfield—such men as Ellenborough—such men as Lord Eldon—men, who commencing with the Attorney-Generalship, rose through all the grades of judicial office to the very highest position in the law. I would love to see the Attorney-General the head of the law in our own State, thus shedding luster upon the whole profession. The time has been in the State of New York when that was the case; when such men as Talcott held the office of the Attorney-General by appointment, and without any disrespect to any one else who has ever filled that office, it may safely be said that no name has ever shed higher luster upon it. We have been told in this house that it is trenching upon the power of the people for us to ask the appointment of the Attorney-General. I would like to make a distinction on this subject of elections, which I believe to be sound. I believe we may divide elections into two classes—those which may be called immediate and those which may be termed intermediate. The immediate elections take place when the people vote directly for the officer; the intermediate elections occur when they vote for him who selects the officer; but they are both in substance elections, whether they be immediate or intermediate. Look for a moment at the report that we have submitted to us in reference to canals. What do we find reported by that committee. Why, that there is to be a superintendent of public works, and that superintendent is to select his assistants. Suppose the people elect a superintendent of public works, do they not in every proper sense elect the assistants? They elect a man who selects the assistants, and, as has been well said by my friend from Kings [Mr. Van Cott], if they can be trusted to elect subordinates they can be trusted to elect the principal who will select subordinates who may carry the power granted to him into effect. If the principle which has been urged

upon this Convention should fully be carried out the people would need to select all the deputies of the sheriff. What do they do? They elect the sheriff, and the sheriff appoints the deputies. Why cannot we elect the Governor and then let him appoint the men who can carry his orders into effect? One word further, and that is in regard to the point upon which so much has been said upon this floor during the day, that we are simply here to carry into effect what we may suppose to be the will of the people. There are two ideas, as I understand it, connected with the notion of such a body as this. One is to compose it of mere deputies—men who have no thoughts of their own, but merely echo the will of the persons who sent them. That was the notion of electing deputies in the middle ages, but I do not understand that that is the idea connected with representation. Representation involves judgment, discretion, thought, deliberation. How shall I deliberate if there is a body standing behind me which forbids me from thinking, a body behind me which says, "do not use your own judgment on this subject but reflect mine?" No, sir, I will not be a member of any deliberative body if I am in that position. If I cannot use my own judgment I will not be a mere deputy or servant. If the people want me to aid them then let me assist them by my judgment and then let them choose whether they want the thing I have propounded to them or not. There is great wisdom in that old saying of Harrington's to which I had occasion before to allude, that the difference between a Convention and the people is that a Convention deliberates and the people choose. A Convention lays before the people the results of its own best thought and then says to the people, "Will you or will you not take it?" That I believe to be our duty here. I, for one, shall not be frightened from my position and propriety by any cry in respect to the supposed but really unascertained will of a body which I cannot hear and which has no means of addressing me but by its vote. I believe that we who are members of this Convention should give the people the best results of our judgment. They will know how to determine the value of our propositions. If the people do not choose to accept what we recommend they have abundant means to procure what they desire. They can call together another similar body, or in some other way provide for the carrying out of their will. When they sent us here they meant we should give them the ripest results of our reflection. The people in a manner grope about blindly. They say, "We want certain results and we do not know how to reach them. We want a good government, how shall we get it?" To this end they have called us together in this place. We must inform them how they shall get a good government. We shall not really perform their will by echoing back to them and saying, "What shall we do?" Let not words be thus bandied from one to the other. Let us do the best thing that is within our power and then submit our labors to the people for their action. I most heartily, from my inmost soul concur with the principle of this amendment. I hope we may, by securing the appointment rather than the election of the At-

torney-General, tend to restore in a measure the office to its original dignity and character.

Mr. A. J. PARKER—I wish to say a few words in support of this amendment, only regretting that it does not go further. We cannot have forgotten that in the Convention of 1846 there was a race of parties to see which could go farthest in depriving the Governor of all power. It was supposed then to be the better policy to decentralize political power, and to take away from the Governor the power of appointment which he had previously exercised, and scatter it through the different counties of the State. In this race it was most effectually accomplished. They left the Governor with very little patronage except the appointment of notaries public. I will not speak of the pardoning power and call that patronage, although some gentlemen have very unjustly, I think, toward the different Governors, said that the exercise of the pardoning power has been influenced by partisan motives. I do not believe it. The Governor was left by the Constitution of 1846 stripped of power except in the matter of notaries public. It was suggested by a gifted gentleman, lately deceased, that we had made the Governor, the first gentleman of the State, but, without a particle of power. I think a very great mistake was committed in this respect by the framers of the present Constitution, and I believe such has been the judgment of the people. The Governor is the executive of the State. He represents, during his term of office the sovereignty of the State. He is bound to see the laws faithfully executed. He represents four millions of people. He is the executive of a greater number of people than was the President at Washington, at the organization of our national government, yet he is stripped of all power—power is decentralized; the appointing power is scattered through the State. The State itself, under the Constitution of 1846, is little more than a confederation of counties. Mr. Chairman, I deny that the people expect that we will let this state of things continue; I believe that they expect that more power will be given to the Executive. They know the fact, the whole world must see it, that at this moment the Executive of the great State of New York can exercise less power of appointment than almost any other Governor in the Union. The smaller states of the Union, I believe, give their Governor at this day more executive power of appointment than belongs to the Governor of this great State. I do not believe gentlemen are right when they say that people have not called for any change. It is not right that the Empire State—that these four millions of people constituting the State should not hold their proper position in this confederacy of States, a position of power and influence commensurate with the numbers they represent, the wealth they possess and the commerce they control. I would add largely myself to the executive power; I believe the people would sanction it. I believe it is necessary to the honor and prosperity of the State and to its influence in the Union, that we should increase the executive patronage and give to the government of this State unity and strength and increased vigor and power. It is proposed that he shall appoint the Attorney-General—one

officer whom he must have occasion very frequently to consult; I would go much further, I would give him a cabinet—at least so far as this—to allow him to appoint some of the leading officers of the State, that they may agree with him politically, and that he may be able to confide in them and have the benefit of their advice, in time of war as well as in time of peace. It is not necessary to say he shall appoint the Comptroller or Treasurer, or those who take care of the funds of the State. We need not go so far as that; but I would give him the power of appointing the Attorney-General, the Secretary of State and perhaps others. I shall vote therefore for the amendment. I only regret it does not go further; but I shall take what is offered, and if occasion is presented I shall vote for the others also.

Mr. CONGER—I move to amend the amendment of the gentleman from New York [Mr. Duganne] by inserting before the words "Attorney-General" the words "Secretary of State."

SEVERAL DELEGATES—"No. no."

Mr. CONGER—I should be very reluctant to interfere with the wishes of those who desire to secure the office of Attorney-General as an appointive office, but, as I have intimated, I cannot consent to giving the Governor one cabinet officer. I am not at liberty now to say what may be the action of the Committee on Education, or the Committee for the Prevention and Punishment of Crime. It is not at all impossible that those committees will recommend that the heads of those departments should be appointed by the Governor, by and with the advice of the Senate. Whether they will recommend the terms of office to be for two years only, or that those officers should go in and out of office with each Governor, it may not be proper for me to say. But if the Governor is to have a cabinet to go in and out of office with him, it should be a cabinet composed of at least two officers. If we can get as much as this, the theory of a cabinet to be selected by the Governor would be preserved; otherwise, such a theory would be visionary and fanciful, and the appointment of the Attorney-General would be a departure from the whole history of this State from its inception, under the Constitution of 1777, down to the present time. It is for that reason, because of what I have heard of earnest remonstrance against the proposed change, or any departure from our established usage, and because of what I fear to be the issue of any theory of touching an appointive cabinet, that I am compelled not to listen to the suggestions which I hear about me, otherwise, I should not have proposed the amendment at this time.

Mr. E. BROOKS—I still hope that the gentleman from Rockland [Mr. Conger] will allow his amendment to come in after the Convention have had an opportunity to vote on the amendment of the gentleman from New York [Mr. Duganne]. I desire that we should now vote on the amendment which has been discussed during the day. I should be much opposed to a provision for the appointment of the Secretary of State. He is, I think, one of the last officers to be appointed by the Governor. If the gentleman from Rockland [Mr. Conger] insists upon his amendment, I

feel called upon to say a word or two in objection, otherwise I shall be glad to take my seat. I would suggest to the gentleman also that it is in the power of the committee to call for a division of the question. He therefore obtains no advantage in pressing his amendment as an amendment to the gentleman from New York.

The CHAIRMAN—The Chair would state that the amendment moved by the gentleman from New York [Mr. Duganne] is simply to strike out the words "Attorney-General." The amendment offered by the gentleman from Rockland [Mr. Conger] is to place before the words "Attorney-General" the words "Secretary of State," so I suppose he intends to move to strike out the words "Secretary of State."

Mr. E. BROOKS—As the gentleman insists upon his amendment I feel bound to say a word or two in opposition to it. There is a broad distinction between the two officers. I will not occupy the time of the committee at this hour of the night in defining what this distinction is. It has been sufficiently discussed during the day. The Attorney-General is not only the law officer of the State, but the Governor is obliged from time to time to seek information from him in regard to what are constitutional laws, in regard to bills before him, and as to what may be his duty in reference to these bills or laws. The office of Secretary of State is as old as the government of the State, and his duties are in many respects peculiar, and have no relation whatever to the gubernatorial office. He is made commissioner of the land office; he belongs to various commissions established by law; to him belongs the performance of the duties of which there is no necessary connection with the Executive of the State. The distinction is a very broad one between this office and the office of Attorney-General. For example, the duties of the Secretary of State, as the Manual tells us, is as the keeper of the State archives and the great seal, and in his office are preserved the original laws and joint resolutions of the Legislature, land papers, Indian treaties, civil commissions, pardons, oaths of office, certificates of incorporation under most of the general laws, depositions of resident aliens, etc. These are the duties which ought to separate him from the office of Governor of the State by power of appointment. Sir, while I am up let me make another remark in reply to my friend from Albany [Mr. A. J. Parker]. When the Constitution of 1846 was framed (perhaps that was the design of the Convention), it defined what the duties of the Governor of the State should be. But let me tell my friend that the Governor of this State, in one county, and that one geographically one of the smallest counties in the State, has more power than is exercised by any ten Governors of moderate-sized States in this Union. The Governor of this State controls the police of the city of New York, and of Kings, Westchester and Richmond counties, through the appointment of commissioners; he has in the patronage of these commissioners a sum of money equal to nearly two million seven hundred thousand dollars a year. He has the appointment of the fire department, he has the appointment, indeed, of all the police of the State as well in this district, em-

bracing the counties of Albany, Rensselaer and Schenectady, as the police of the frontier. He has police powers, and patronage extending to the very borders of the State. I think, therefore, the powers of the Governor are very respectable, both in point of numbers and in point of patronage. There are many other powers given to the Governor in the Constitution than those we are accustomed to attach to his position. They are all important powers, not merely in regard to enforcing the laws, but in communicating with the Legislature annually, nominating, and, with the consent of the Senate, appointing the major-generals and commissary-general. He has power to commission the officers of the militia, and under the laws of the State, to nominate, and by and with the advice and consent of the Senate, appoint the auditor of the canal department, the superintendent of the insurance department, the superintendent of the banking department, three canal appraisers, three State assessors, three commissioners of public accounts, four, trustees for the State asylum for idiots, nine managers of the State lunatic asylum, six trustees for the Willard asylum for the insane, and so I might go on over the whole page of written powers.

Mr. A. J. PARKER—Will the gentleman permit me to ask him whether those powers have not been created by statute since the adoption of the Constitution of 1846.

Mr. E. BROOKS—That may be, yet it is under powers given to him by the Legislature, and in the Constitution of 1846, that he is enabled to possess all these powers. The Governor of this State, then, is a good deal more than "the first gentleman of the State," as has been said by the gentleman from Albany [Mr. A. J. Parker]. Certainly he is more than "the figure-head of the State," to use a phrase which has sometimes been uttered in this Convention, rather to the disparagement of the gubernatorial office, than to the dignity which, in my judgment, belongs to the office. Sir, the Governor of the State of New York has great and important powers, as I have stated here, and as we all know. The power of pardon has been spoken of lightly. And yet every day of the three hundred and sixty-five days in the year the Governor of this State has the power to say to at least, six criminals in prison (such is the average number of daily pardons), "You are free; you are relieved from the punishment imposed upon you by law. Go where you will." Now, as I said in the outset, I realize a marked distinction between the office of Secretary of State and the office of Attorney-General. I hope this Convention, while it is disposed to recommend to the people the appointment of the one it will insist upon the election of the other, and most of all I hope it will not carry the principle of appointment so far as to destroy the good which might otherwise be effected.

The question was put on the amendment of Mr. Conger, and it was declared lost.

The question then recurred and was put on the amendment of Mr. Duganne, and on a division it was declared lost, by a vote of 54 to 56.

Mr. SPENCER—I offer the following amendment:

Mr. CHURCH—I do not doubt the intention of the Clerk to make the count on the last vote with entire accuracy; but where the numbers are so very close, it is somewhat difficult to count with certainty, and I have some doubt whether the amendment was lost or not.

Mr. FOLGER—I rise to a point of order. The amendment was declared lost, and the decision was acquiesced in by the Convention.

The CHAIRMAN—The point of order is well taken.

Mr. CHURCH—I only intended to move the reconsideration of the vote.

Mr. M. I. TOWNSEND—I rise to a question of order. The gentleman from Steuben [Mr. Spencer] has the floor, and he is offering an amendment.

The CHAIRMAN—The gentleman from Steuben [Mr. Spencer] has the floor.

The SECRETARY read the amendment of Mr. Spencer, as follows:

Amend section one by striking out all after the word "Governor," in line five, to and including the word "Engineer," in line nine.

Mr. SPENCER—I propose to strike out this language: "but no person shall be elected to the office of Attorney-General who shall not have been a counselor-at-law of this State for ten years; and no person shall be elected to the office of State Engineer and Surveyor, who shall not then be a practical engineer." My object in offering this amendment is to remove from the proposed Constitution, if it shall be adopted, a provision which is cumbersome, and which is without any practical utility. A simple consideration will demonstrate the proposition. This provision requires that the officer proposed to be elected to the office of Attorney-General shall be a counselor-at-law of ten years' standing. And this does not, as every one may easily see, provide for any qualification which can recommend him to that office; for a person may be a counselor-at-law who has held his license for that purpose for ten years, and yet have no practical or even theoretical knowledge of the principles of law or of its administration. Now, of what possible utility is a provision of this kind in the Constitution of the State? The same thing may be said of the provision in regard to the State Engineer. I am aware that that provision has existed in the Constitution of the State for the last twenty years; but who does not know that a person may be a practical engineer—that is come within that designation—and yet after all have no real knowledge of either the theory or the practice of engineering. What I object to in this provision is that it loads up the Constitution with an entirely useless matter; and this is sufficient, in my judgment, to require its exclusion from the Constitution, to say nothing about the consideration which has been urged by the gentleman from Otsego [Mr. Ferry], that the people themselves are competent to determine who is and who is not competent to fill either of these offices.

Mr. FOLGER—I move that the committee now rise and report progress.

The question was put on the motion of Mr. Folger, and it was declared carried, on a division, by a vote of 59 to 35.

Whereupon, the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. GARVIN, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Secretary of State, Comptroller, etc., had made some progress therein, but not having gone through therewith, had instructed their chairman to report that fact to the Convention, and ask leave to sit again.

Mr. MERRILL—I move that the Committee of the Whole be discharged from the further consideration of this report, and that the article be referred to the Convention.

Mr. WEED—I move that the Convention do now adjourn.

Mr. MERRILL—I believe I have the floor—desiring to state very briefly my reasons for making this motion. I do so for the purpose of saving time. We have spent six or seven hours over one amendment, on a question of pure expediency, about which it seems to me the Convention is perfectly competent to make up its mind in half an hour. The committee reported an article, wisely proposing no intricate or uncalled-for innovations on the present Constitution. It seems to me that this can be taken up in the morning and disposed of in the Convention just as wisely and much more expeditiously. I move that the Committee of the Whole be discharged from the further consideration of this report and that it be considered by the Convention.

Mr. WEED—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Weed, and it was declared lost.

Mr. WEED—I call for the ayes and noes.

The SECRETARY announced that but thirteen members seconded the call.

The PRESIDENT—A sufficient number not having seconded the call, the ayes and noes are not ordered.

Mr. WEED—I rise to a point of order. There were over twenty up; I challenge the count of the Secretary.

The PRESIDENT—Those only who rose to second the call for the ayes and noes will please rise and remain standing until they are counted.

A second count being had, the SECRETARY announced that twenty-one members seconded the call.

The SECRETARY proceeded to call the roll and the motion of Mr. Weed was declared lost by the following vote:

Ayes—Messrs. Baker, Barnard, Beckwith, Bergen, Bowen, E. Brooks, E. A. Brown, Cassidy, Chesebro, Conger, Cooke, Ferry, Field, Fuller, Garvin, Gerry, Graves, Hale, Hitchcock, Hitchman, Livingston, Lowrey, Magee, Mattice, More, Morris, Opdyke, Paige, Reynolds, Robertson, L. W. Russell, Schell, Silvester, Smith, Spencer, Tappan, M. I. Townsend, S. Townsend, Van Campen, Verplanck, Wakeman, Weed, Wickham, Young—44.

Noes—Messrs. A. F. Allen, C. L. Allen, Andrews, Archer, Axtell, Ballard, Barker, Beadle, Bell, Bickford, E. P. Brooks, Cheritree, Clinton, Corbett, Curtis, Duganne, C. C. Dwight, T. W. Dwight, Endress, Farnum, Folger, Fowler, Gould,

Grant, Greeley, Hadley, Hammond, Hand, Hard-
denburgh, Harris, Hiscock, Houston, Hutchins,
Ketcham, Kinney, Krum, Lapham, A. Lawrence,
M. H. Lawrence, Lee, Ludington, McDonald, Mer-
rill, Merwin, A. J. Parker, Pierrepont, Potter,
President, Prindle, Prosser, Root, Rumsey, Sea-
ver, Sheldon, Stratton, Van Cott, Wales, Wil-
liams—58.

The question was then put on the motion of
Mr. Merrill, and it was declared adopted.

Mr. SCHELL—I move that the Convention
do now adjourn.

The question was put on the motion of Mr.
Schell, and it was declared carried.

So the Convention adjourned.

THURSDAY, August 29, 1867.

The Convention met at ten o'clock.

Prayer was offered by Rev. E. B. RUSSELL.

The Journal of yesterday was read by the
SECRETARY and approved.

Mr. MERWIN—I ask leave of absence for
Mr. Krum for the remainder of this week, he
being called home by the sickness of his father.

There being no objection, leave was granted.

Mr. HATCH—I ask the unanimous consent
of the Convention to make a very brief state-
ment.

The question was put on the motion of Mr.
Hatch and it was declared carried.

Mr. HATCH—Inasmuch as the Convention
by a vote has postponed the consideration of the
question of finances and canals to next week, I
desire to make some explanations to annex to
my minority report upon finances some tables,
with a change in the financial article.

I propose to change the financial section ap-
pended to my report. I propose, instead of
seven millions, that there shall be borrowed on
the pledge of the revenues of the canal, eight
millions to be used for the improvement of the
canals, with the proviso that the money should
not be borrowed until it is ascertained that
the eight millions will accomplish the proposed
improvement. The table which I have prepared
and now present will show that the canal and
general fund debts will be paid in ten years
thereafter. It will be found, on examination,
that the basis of calculation is a net canal revenue
of three millions. There is no credit for increase
of revenue, when we know canal revenues have
doubled in every decade. It will be further
noticed in the table that there is no credit for
decrease in cost of superintendence and repairs
of canals when it is understood that this year
will show a decrease in that item of half a mil-
lion. Giving the surplus canal revenues any
credit for decrease in expenditure for repairs,
the old and new debt would be paid in less than
fifteen years. There must be great reduction in
cost of the management of the canals, for the
venal classes are already trembling with alarm
at the apprehended action of the Convention. I
desire only to add that if the financial article
presented by the Canal Committee should not
meet with the approval of the Convention, it
will receive my cordial support.

I commence by assuming the present ca-
nal stock debt to be, \$15,766,060 00
The general fund stock debt, 5,804,218 75

Total, \$21,569,278 75

The annual interest on this is, 1,234,663 35

1867, September 30. Balance
in sinking fund, applicable
to principal and future in-
terest, \$2,755,595.26

1867, September 30. Deduct
paid general fund, 1,850,000 00

\$1,405,595.26

This pays one year's interest and stock due
in 1868

1867, September 30. General fund reduced
by, \$1,000,000 00

Balance of debt, \$20,569,278 75

Annual interest after 1868, say, 1,162,268 00

To pay this principal in ten years would re-
quire an annual contribution of \$2,056,927.87.

On the 30th of September, 1867, there will be
due the general fund for one year's interest on
that debt, \$350,000. This must be paid. In
1868, \$942,961.05 falls due early in that year,
and it must be paid from the surplus on hand
or the means raised by a deficiency loan. That
is, you use the money for other purposes, you
must borrow to make it up.

1868, Sept. 30, assume an annual net revenue on and
after this date of, \$3,000,000 00

This in seven years would give, 21,000,000 00

Int. on canal debt in 7 years, say \$5,227,000

Contributions to pay balance

general fund debt in 7 years, \$4,900,000

\$10,100,000 00

\$10,900,000 00

Then take three years surplus, 9,000,000 00

And we have a balance, \$19,900,000 00

1878, Sept. 30, canal debt paid, 15,517,150 00

Surplus, \$4,382,840 00

To pay ten years' interest on \$8,000,000 of
new debt, at 6 per cent, you will need the full
sum of \$4,800,000. In this there is nothing
added for increase of the revenue, nor for inter-
est on the surplus balances in the sinking funds;
but the statement shows that the whole present
canal and general fund debt can be paid in ten
years and leave a balance to pay the interest on
\$8,000,000 of debt at 6 per cent, and at the end
of ten years you can begin to lay by capital to
pay the principal of the \$8,000,000 and pay it
off within eighteen years. On examination I do
not think that there will be a surplus balance
of \$7,644,314.24 realized January 1, 1870, and
that there will not be on that day any such sum
as \$6,644,314.24 to be expended on the contem-
plated improvement; and besides, the improve-
ment, if done at all, should one-half of it be fin-
ished in the spring of 1869, and the other half
in the spring of 1870. I also propose, in case
the financial article proposed is accepted, that it
should be submitted to the people as a separate
proposition, leaving them to exercise full power
over the question without being involved with
other questions.

The question was then put on the motion of
Mr. Hatch, and it was declared carried, and the
additional report ordered to be printed.

Mr. SEAVER from the Committee on Print-
ing, made the following report:

Your committee to whom was referred the following resolution:

Resolved, That twice the usual number of the report of the Committee on the Powers and Duties of the Legislature, be printed for the use of the Convention; would respectfully recommend that the same be not adopted.

The question was then put on agreeing with the report, and it was declared carried.

Mr. MERRILL—I offer a resolution.

The SECRETARY proceeded to read the resolution as follows:

Resolved, That debate on the report of the Committee on the Powers and Duties of the Legislature, except as otherwise referred, be limited to ten minutes to each speaker in Committee of the Whole, and to five minutes to each speaker in the Convention.

The resolution giving rise to debate was laid on the table under the rule.

Mr. BARNARD—I offer a resolution and request that it lie on the table.

The SECRETARY proceeded to read the resolution as follows:

Resolved, That the Committee on Revision be instructed to insert in the article on counties, towns and villages, their organization, government and powers, the following section:

SEC. All moneys to be raised in any county for the support of the poor, other than for the erection or rent of buildings, shall be separately levied and stated in the assessment roll. Any tax payer, at the time of the payment of his tax, shall have the right to state in writing to the collector to what incorporated institution in said county, where the poor are gratuitously supported, he elects that the tax so paid by him for the support of the poor shall be paid, and thereupon the institution so designated shall be entitled to receive from the moneys so paid, the whole or such portion thereof as the number of the poor supported by it shall bear to the whole number supported by tax in said county, and at the same proportionate rate. The Legislature shall provide for the manner of distributing such moneys and for the visitation of such institutions as may claim to receive the same.

The PRESIDENT—At the request of the mover, this resolution will lie on the table.

The PRESIDENT announced the pending general order to be the report of the Committee on the Powers and Duties of the Legislature.

Mr. ROBERTSON—In consequence of the continued illness of my colleague [Mr. Burrill] who is upon the Committee on the Powers and Duties of the Legislature, and who joined with me in making the minority report, and who is not here, and in consequence of the non-printing of these reports we ask to have the consideration of this subject postponed until Tuesday of next week, after the general orders of the day.

Mr. MERRILL—I hope this motion will not prevail. As I understand it, we have no other report upon the general orders with which we can occupy the time until next Tuesday. It seems to me the work in the Committee of the Whole on this report can commence, and gentlemen who are unable to be present can come in before the article is presented to the Conven-

tion; but we shall be utterly without any material to work on if the present report is disposed of in this way.

Mr. GERRY—I hope the motion will prevail. Mr. Burrill has been ill for seven days at Saratoga, and incapacitated on account of physical suffering, from attending to his duties here in this Convention. The precedent has already been established in relation to one committee, in consequence of the illness of one of the gentlemen interested in its advocacy, and I certainly think in regard to a report so important as that of the powers and duties of the Legislature, that at least a delay of three or four days might be granted under the circumstances, particularly when the gentleman who is absent differs from the opinion expressed by a majority of the committee.

Mr. WEED—I do not understand the statement of the gentleman from Wyoming [Mr. Merrill] as correct in regard to the general orders. I know of no reason why the report of the Committee on Canals in regard to the control and management of the canals, which is an important report, and one that should be discussed and will be discussed fully in this Convention, is not upon the general orders. It is upon the general orders and for consideration and can be considered at any time when it is reached. That portion relating to the finances of the State was referred to the same Committee of the Whole that had in charge the report of the Committee on Finances, and that was only postponed until Tuesday. There is abundance of work, therefore, before this Convention until the special order of next Tuesday, and I think it is proper, as long as the minority report of the Committee on the Powers and Duties of the Legislature has not yet been printed and placed upon our tables, to postpone its report until we can see that report, and understand it and have an opportunity to peruse it.

Mr. GREELEY—It is perfectly well understood that a good many gentlemen here would like to postpone everything indefinitely. If we are ever to go on with this business, we must take hold of it, and not delay because one gentleman is sick, and another gentleman is away. One gentleman stated just now that a precedent has been established. It is quite time that that precedent was overstepped—quite time that it was determined by this Convention that business must go on, without reference to the convenience or the absence of this or that member. We set a very bad precedent yesterday, in postponing the consideration of the report on the canals and finances. I pray the Convention to go on with its work to-day, and not allow a postponement.

Mr. MERRILL—In reply to the remarks of the gentleman from Clinton [Mr. Weed], I will say that the chairman of the Canal Committee is absent from the city, and he supposed that part of the report which was postponed until next Tuesday, carried with it the whole report.

Mr. WEED—May I ask the gentleman from Wyoming [Mr. Merrill], how does he know that the chairman of the Canal Committee understood that the postponement of the financial

article of the report of that committee would carry the whole report with it?

Mr. MERRILL—I obtained my information from the gentleman from Onondaga [Mr. Alvord], who is second on the Canal Committee, and who, I suppose, knows something about it.

Mr. E. A. BROWN—I believe my friend from Clinton [Mr. Weed], is mistaken in regard to the report not being printed. I think he will find it on the files. It seems to me that some member of every committee will be absent almost every day. For myself, I shall be under the necessity of being absent a part, if not the whole of next week. Of course I shall not ask any postponement of the consideration of the report of the Committee of which I am a member, though I would greatly desire to be present when it is considered.

Mr. ROBERTSON—I think the minority of the committee are entitled to the benefit of an adjournment in consequence of inevitable accident. Mr. Burrill as well as myself had supposed that the report of the Committee on Finances would come before this Convention during this week and that it would occupy the whole of the week. Mr. Burrill was taken ill, the minority report was here in Albany and I was unable to find it, having no instruction from Mr. Burrill in regard to it. During our absence the majority report was presented here, and on my return to Albany, after considerable inquiry I was enabled to find where the minority report was placed. Mr. Burrill was taken ill at Saratoga and wrote word to me that his physician had forbid him to leave the hotel, but if it was absolutely necessary he would endeavor to come on here unless he was dying, and if our report came on he would be here. I sent word to Mr. Burrill, that there was ample business to occupy the Convention, and the probability was that the report would not come on, but I would present the minority report and I did so. It has not yet been printed. We are not in a position to place ourselves fairly before this Convention, and I think we are as much entitled to indulgence as other gentlemen of this Convention. In consequence of this inevitable accident and the non-printing of this report, we are placed in this embarrassing position. Gentlemen say the Convention will not be occupied with business. There appears to be two classes of gentlemen in the Convention who discuss questions in regard to postponement; one of whom indulge in inevitable and perpetual scolding, and claim sometimes that we are desirous of avoiding all responsibility, and at others that we are desirous of postponing all matters. I have seen no disposition of that kind on the part of the Convention, and I think the postponement of this question, after the labor we have undergone in the various committees and in the Convention, is no more than just and fair toward us. I apprehend on this question gentlemen will deal with something like courtesy toward those who are inevitably prevented by sickness from being present. Our object here is not to force a Constitution of any kind through this Convention for the purpose of being presented to the people, but it is for the purpose of

presenting a Constitution which is the result of the deliberate examination and choice of this Convention, or for the purpose of presenting those matters which, as they come from the committees, may not meet even the cordial or intelligent support of the Convention (judging from the past). We have even a proposition this morning that debate shall be limited to five minutes upon matters which come before this Convention in regard to this report. I ask if that is the proper mode of presenting to the people of the State of New York a Constitution which shall take the place of the Constitution which has been tried for twenty years, and which we at least propose to change in but few respects.

Mr. GERRY—The report of the majority of the committee comprises over thirty sections for consideration. It embraces the powers and duties of the Legislature, and affects most vitally the administration of the government of the State. I, for one, do not believe it is the intention of the majority of this Convention to force through, even under the operation of the previous question, the adoption of so important a report as this, when a minority report has to be presented by a gentleman, who is, unfortunately ill at this time, and unable to state his personal views in regard to it, which differ radically from the majority report. If this is the case, the sooner we know it the better.

Mr. SEAVER—As we have a full day's work before us, and no immediate necessity of postponing the future labors of this Convention, I move that the motion to postpone do lie on the table.

The question was put on the motion of Mr. Seaver, and it was declared carried.

The Convention then proceeded to consider the report of the Committee on the Attorney General, Secretary of State, etc.

The SECRETARY proceeded to read the first section, as follows:

Sao. 1. The Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor, shall be chosen at the same general election at which a Governor shall be chosen, and shall hold their offices for the same term as the Governor. But no person shall be elected to the office of Attorney-General, who shall not have been a counselor-at-law of this State for ten years; and no person shall be elected to the office of State Engineer and Surveyor, who shall not then be a practical engineer. The Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor, elected at the general election held on the Tuesday succeeding the 1st Monday of November, 1867, shall hold their respective offices until and including the 31st day of December, 1868, and no longer.

Mr. DUGANNE—I move to strike out the words "Attorney-General," and upon that I call the previous question.

Mr. FOLGER Some gentlemen have not yet been heard on this subject.

The question was then put on the motion of Mr. Duganne as to ordering the previous question, and it was declared lost.

Mr. FOLGER—I wish to say but a few words on this subject. It occurred to me, while listening to the debate yesterday, upon this question, what would be the idea of an entire stranger to our political history, a thoughtful, intelligent man, who should, while it was going on here, come into the gallery of this chamber and listened to that debate? The first thing he would have done would have been to ask, "What is this body?" He would have been told it was a delegated Convention, sent here by the people of the State of New York. He would have asked, "what for?" and he would have been told, that it was a Convention to revise and amend the Constitution which had been adopted in 1846. He would have said: "That is a good idea, for twenty years' experience must have developed whether that Constitution was entirely good, or whether, from a tremor felt in the whole, there must be some friction in some of the parts," and he would have said: "It is a very good idea, after the lapse of twenty years, to bring together the delegated wisdom of the State, and see where that friction is and to apply some unguents which would relieve it." When he heard us debating the question whether the Attorney-General should be appointed or elected, he would listen, and listen in vain, through all the twenty-four hours this question has been under discussion, for any one participating in it to state where, in practice as to this officer, under this Constitution, there was any friction. He would have waited in vain for any one who had looked through the machine and inspected the daily workings of the Constitution of 1846 to tell him, or this Convention, where a cog did not mash, or where a journal creaked. No one has told us where, in practice, there was anything wrong in electing the Attorney-General. No one has cited to us an instance, for twenty years, of practical difficulty. Not a soul. Here we have been twenty years experimenting under the Constitution of 1846, and we have come here now, not to make a new one, not to develop theories, not to put in form of words any speculations evolved in our closets, and in our closets only, by reading or thought there, but to put into the Constitution something which experience demands should be changed, something by way of supply or remedy where the experiment had worked illy, where the machinery has creaked, or has worn and nothing else. I say, that to any stranger sitting in the gallery, the whole debate would have been a mere advancement of theory, a mere discussion of what men had concluded was proper, in their own reflections from theory and not from practice, or had read of in English history or some other history. No man has said, at such a time the Governor could not get a constitutional opinion from the Attorney-General, because the Attorney-General was elected from a different party from himself, was not his creature, and was not appointed by himself. No one has suggested any such practical difficulty, but, on the contrary, from the silence, we must take it as settled, as proved, that the system has worked well in practice, and when the Governor has desired a constitutional opinion, he has got it. True, the Attorney-General has been not

his officer—not his puppet—compelled to dance "Punch and Judy" when he pulled the string; but he has been the officer of the people, and the officer of every department of the State government, and of every State officer of the people. When consulted by the Comptroller on a question of constitutional right, or upon a question of legal construction, he has answered him; when consulted by the auditor of the canal department, he has answered him; when he was consulted by the commissioners of the canal fund, he has answered them; when he was called upon to defend a mandamus issued against any financial or other officer he has answered by defending him; when a gross murder, or an atrocious wrong against the State has been committed, and the criminal has been brought to trial, he has gone there to care for the cause of the people of the State, and to assert their rights and vindicate the majesty of the law in the proper way. Has there been any failure in this respect? Has any gentleman suggested or pointed out any such failure? No, the courts of justice have been open, and the Attorney-General has appeared in them with dignity and efficiency, criminals have been prosecuted, executions have taken place, crime has been punished, and the majesty of the law has been asserted and penalties have been enforced. All questions presented by any department to any Attorney-General have been answered satisfactorily, so far as we know or have heard, or has been hinted at. But, I say that, if we go on theory even, and alone, that then the true theory is the Attorney-General should not be the officer of the Governor alone, because the Governor may be in conflict with other departments of the government, and should not have a controlling influence over the Attorney-General, and I have known a case where the Governor was in conflict with the Legislature, and where the Governor vetoed a bill which the Attorney-General, at the request of the Legislature had pronounced constitutional. Suppose he had been a mere creature of the Governor, his appointee, dependent upon his smile and favor, and the Legislature had sent their resolution of inquiry to him, would there not have been danger that the answer would have accorded with the Governor's opinion? But it was different, and it should have been different if there was any conscientious difference, and the Legislature had as much right to call upon the Attorney-General for a constitutional opinion as the Governor had to call on him. And it was important, and always will be important, that the Attorney-General should not feel dependence on either. So much for the theory of the matter. He is not the officer of any one man as gentlemen have talked, and should not be, and I was surprised to hear the gentleman from Oneida [Mr. T. W. Dwight] draw a sort of analogy between the Governor of this State and the sovereign of England, as if the mere fact of taking one man from the body of the people, and putting him in a state of servitude, to act as the agent of the people for two years, made him a sovereign and elevated him, and changed his

clay from the common clay of man into a richer porcelain, as if it was something higher to be set up there as a sovereign. I was surprised that that gentleman with the perfume of the Mayflower about him, as his name would seem to indicate, should advance such an idea here. He is not a sovereign. He is an agent of the people, correlative with the Attorney-General, who is also an agent of the people, and no more consideration is to be given to him, as such agent, than to any other agent of the people. I was surprised to hear my friend from Ontario [Mr. Lapham], barn-burner as he is, and as I am, crying in the ears of the Constitution of 1846, as a poor dying Constitution, and thumping it about as though it was an effete and played-out instrument. It is not so. He and I had our political birth at about the time of that Constitution. It was then that our young thews and sinews first came into the political arena, and if he looked upon the place from which he came with loathing as the pit from which he was dug, I shall not cast despite upon the political womb in which I was engendered, nor rail at the loins which begat me. Why, the gentlemen would compare the popular fervor which carried the Constitution of 1846, and changed the old centralizing tendencies of the Constitution of 1821, to a torrent impetuous, rushing down the hills, from the birth of sudden showers which had overrun its banks in its course. Did he in his young days claim that the popular fervor was such a rushing torrent as this, that went headlong and knew not where it was going, and must be got back again into normal courses? No, he and I then believed that it was directed not by chance but by the laws of political cause and effect, as unvarying as the laws of nature, and that the indications of the popular will were to be regarded, and should be regarded. The people in 1846 adopted a Constitution which gave them the election of their agents. I believe that they have ever since adhered to it, and to so much of its principles, and ever will adhere. I believe that the people were right.

Mr. DUGANNE—When I moved the previous question I did not suppose that I was preventing an expression of opinion from gentlemen at all. I did not suppose that any gentleman had sat all day yesterday, and all the hours of last evening, silent, during the discussion, without attempting to get the floor, in order to rise, to-day, when there is an apparent feeling against the amendment, and make an *ad captandum* speech against it, to define his position. Sir, the gentleman asks what argument has been brought to show that this amendment ought to pass. I ask what argument his speech contains to show that it should not pass? He speaks of no argument having been presented, mere theory having alone been embraced in the speeches of the gentlemen who have supported this amendment. I ask whether he has embodied anything but theory, in his brief speech against the amendment? Sir, I believe, and I know, as we all know, that the power of this Government, like the power of all commonwealths is placed in three arms of

the government—the judiciary, the executive and the legislative. Now, sir, the Governor is bound by law to see that the laws are faithfully executed. Being thus bound by law, the responsibility resting on him, I ask why should not the law officer be given to him as his guide and as his support? The gentleman says there is no reason for this change, that it has worked well, that there has been no friction. There may not have been any friction in a great many offices of the State, and yet some of them may be entirely useless. I contend that the argument of those who are in favor of the amendment is based upon one patent fact, that the Executive of this State needs assistance, needs power, needs counsel, which he does not now have, and the question is whether we shall give him something in the shape of assistance, by creating entirely new officers, and saddling new expenses on the people, or whether we shall take certain officers that now exist and make them a consulting body, and an assisting power to the Governor. I contend it is better to give the Governor the Attorney-General for his counselor and his support, than to create a new officer, whom you might call a cabinet officer, and whom I believe also to be absolutely necessary hereafter in order to assist in the conduct of the affairs of this great State. I have failed to find, in the very eloquent and very affecting speech of the gentleman from Ontario [Mr. Folger], with regard to the loins which begat him, and the womb from which he sprang, anything at all that may be considered a rebuttal of the arguments of those gentlemen who have supported the amendment.

Mr. WAKEMAN—I have listened with a good deal of interest to the debate on this question, and in the outset I felt quite indifferent as to the result, making up my mind, however, that I should vote in favor of retaining the election of the Attorney-General by the people, as it now stands in the Constitution of 1846. But, from mature reflection on this subject, after the debate last night and the action upon it, I have become decided in my position in favor of electing the Attorney-General, and I will very briefly state some of the reasons which make me more firm in that opinion than I was in the first place. I wish to ask gentlemen a few questions here. I ask if we retain the plan of electing the Attorney-General in the present Constitution in the one we are about to adopt, and place that before the people of this State, is there a man anywhere in your district, in your judgment, who will raise his voice against it? I ask the gentlemen to reflect whether they have a constituent in any part of their districts, if we allow that constituent to vote for Attorney-General, as he has done for the last twenty years, who will make any point against the Constitution that we present before them? I venture to say they cannot put their minds upon one man who will make any opposition to the Constitution on that account. Now let us change it over on the other side to see how it will be. We have allowed the people of the State for the last twenty years to vote for that officer, and when you take away that right, and the people come to discuss that

question, I ask if there are not men everywhere that will raise a point against the Constitution, and will be dissatisfied about it, and with reference to some other portion of it will be induced to vote against it. Sir, in looking in upon this Convention last evening I was struck somewhat forcibly with this: I saw the strong men in this Convention taking sides in favor of going back, and taking this question from the people. When I saw the Parkers, the Dwights, the Paiges, the Brookses, the Greeleys, the Andrews, the Laphams, and the Kernans taking sides in favor of this amendment, I was really fearful that this question would be taken from the people by the vote of last evening. When the vote was taken I discovered the quiet, peaceable men in this Convention, men that are humble and claim to be humble in their position (I do not mean all), were voting steadily in favor of leaving with the people what they had before. Now, sir, I live among the farmers, mechanics and workmen of this State. I am somewhat intimate with that class of men in my own district, and I believe they are quite willing and satisfied with the privilege of voting for the officers that are now elected by the people of the State. I believe they think it is a privilege to vote for those State officers, and when I shall return to my home and they ask me, "Why did you take away the election of Attorney-General from the people?" what answer can I give them? Could I say to them, "Sir, it is claimed that the Governor should have control of that officer?" They would tell me, "That is the very reason why we do not wish to have him appointed." If I should tell them that it was the duty of the Governor to see the laws faithfully executed, they would tell me in return that the Governor has power to direct the Attorney-General to perform his duty, and if he fails to do it to make charges against him and remove him, and if in the mean time he requires the action of a legal adviser, he has power to call upon Mr. A or Mr. B, eminent in the profession, and avail himself of their services, and they would say to me, "The Attorney-General of this State is an officer that is dignified at the present time." His duties are not particularly connected with the Governor of this State. His duties are various, and so various that the humble officer of a town that calls upon him for an opinion in reference to his duty, on a particular point can call for it, and the Attorney-General responds to that call by an opinion. Shall we reduce an office that has been dignified by the action of the people for the last twenty years to a mere clerk of the Governor, to be entirely under his control and action according to his particular direction, or shall he be an independent officer, to perform his duty independent of the Governor and be responsible to the people that elect him? I tell you, when you come to go back to the old principle, while there has been no complaint made on the point raised, I think the people will be dissatisfied. I ask gentlemen here to recollect the Constitution of 1821, when Martin Van Buren took ground against giving the election of justices of the peace to the people of this State, at a time, too, when we had not come up to the standard we have now—do they remember that, although Martin Van Buren lived to a good

old age and filled the measure of his country's glory in the highest office in the gift of the American people, he did not live long enough to outlive his action in 1821, and when we come to go back of 1846 and take away the power that we have given the people on this question, I tell you, sir, the masses of the people will not forget it during the lifetime of the longest liver of this Constitution. The people are jealous on this question, and particularly so when there can be no reason assigned for it, except the bare reason that this officer should be the confidential adviser of the Executive of the State. Why should not the Attorney-General, elected on the same ticket, placed on the same platform, be the confidential adviser of the Executive, I ask you? Why, the argument is if he does not give an opinion, or act exactly as the Governor would desire him to do, the Governor has power to remove him, and to place somebody else in his position that will give him the precise opinion he wants. That is the reason why the people of the State do not wish to put the Attorney-General in the position desired by this amendment. Now, gentlemen, if you desire to have this question approved by the people, so that they will not complain of your action, leave well enough alone, not only in reference to the Attorney-General, but in reference to every other point connected with the Constitution of 1846, where no complaint has been made. On a brief visit home, a few days since, one of my constituents said to me, "Sir, I am afraid you are trying to do too much in your Convention. I am afraid you are trying to legislate there. I advise you to go in for amendments that the people call for, to the present Constitution; and where it has worked well let it alone, or re-adopt it, and present it to us for our consideration." I, for one, sir, have taken somewhat of a lesson by going home a few days, on that question, and I say to gentlemen here, if you wish to satisfy your constituents, do the best you can toward correcting the evils that already exist, and do not undertake to try any experiment upon the people, by any untried, new invention, and especially so upon a point that the people make no complaint about whatever. The close vote last evening of 54 to 56, satisfies me that there is danger that the adoption of the amendment of the honorable gentleman from New York [Mr. Duganne] may possibly be carried in this Convention. I hope, therefore, gentlemen will reflect carefully, and have no particular pride of opinion about carrying this measure; because they have advocated it once, therefore, they must advocate and vote for it again. I hope they will look to it and see what the final result will be, and see whether it is not a great deal better to allow the people to do what they have done for the last twenty years on this subject rather than to take away the power given to them. It is much easier to adopt a measure in the first instance, where it is an open question, than it is to tear down or abolish a system that has once been tried, and that the people are satisfied with. I hope that when we come to have the ayes and noes, the voice of the Convention will be in favor of retaining the power that has been given to the people heretofore on this question, and

in doing so there can be no doubt whatever but the people of this State from one end of it to the other, all classes of the community, will be entirely satisfied with its action. Whereas, on the other point, you will hear mutterings from all portions of the State, and we do not wish to load down this Constitution with anything that will be distasteful to the people, because ultimately the people will have to pass upon it. As a whole let us give them the best Constitution we can, and confine ourselves to the Constitution of 1846 by way of amendment and revision rather than making a new Constitution.

Mr. GOULD—I do not rise in this late stage of the debate to enter into an elaborate argument upon the subject, but the gentleman from Ontario [Mr. Folger] treated us to such a vehement tirade against those who have argued in favor of granting the power of appointing the Attorney-General to the Governor and the Senate that I desire to answer him. He has alleged that the whole of the argument has been theoretical, that it has been made in the closet and that it was not founded on any practical considerations whatever. Now, sir, I wish to say a few words in regard to the practical aspect of the question rejecting theory altogether. It is somewhat ungrateful to speak on this subject, as the person who argues this side of the question may be supposed to find fault with the gentlemen who filled the office of Attorney-General in times that are past, but my objections apply wholly to the system and not to the men. But sir, what are the facts of the case? I have been informed on good authority that during the administration of Governor Hunt he never in a single instance called upon the Attorney-General of the day for an opinion, or asked him to perform any official act whatever. He, whenever he required legal opinion, as I have been informed, called upon John C. Spencer to give him his advice, and relied upon it exclusively. I have been also informed that six thousand dollars were paid by the State to Mr. Spencer for legal advice given to the Governor, simply because he had not confidence in the Attorney-General of his day, and would not ask him for his advice. I have been further informed that the people of this State have paid over fifty thousand dollars since the Constitution of 1846 was adopted for advice outside of the Attorney-General's office, which was required by the Governor, because he had not confidence in the Attorney-General who was in office at the time, and because there were not cordial and agreeable relations between them. It seems to me, sir, this is a real and practical reason, on the ground of economy, why the Governor should be allowed to appoint the Attorney-General, so that he might have confidence in him, and thus save to the State the expense of legal counsel outside of the Attorney-General's office. Now, sir, I ask those who are familiar with the capitol here, how much time the several Attorney-Generals of this State have spent in their office in the State hall since the Constitution of 1846 was adopted? Is it not known, sir, that the Attorney-General, unless he happens to be a resident of Albany, is scarcely ever in his office? If any gentleman connected with any of the public boards of the State comes to the city of Albany in order to

obtain advice from the Attorney-General, he simply cannot get it, he must take it from the deputy of the Attorney-General, or go without it altogether. The Governor has no power whatever to require the Attorney-General to reside in this city. If he tells him he requires him to be here for a given purpose, the Attorney-General very correctly responds that he is elected by the same power that he himself is, that he owes no subordination to him whatever, and that he will come or go just precisely as he pleases. It seems to me this is a decided objection to this mode of electing him; the practical independence it gives the Attorney-General of the Governor is very injurious to the public service. He may require his services ever so much, and yet he has no power to compel those services. Questions are arising in the Executive chamber day by day upon which he requires legal advice, and he cannot get that legal advice because the Attorney-General is not here.

Mr. VERPLANCK—I would ask the gentleman whether this difficulty cannot be remedied by altering the law? The law now requires the Attorney-General to reside in Albany during the session of the Legislature, and I think this might be remedied by altering the law so as to require him to reside here at other times.

Mr. GOULD—I think it would be better to provide by the organic law for harmonious relations between the Attorney-General and the Governor. One thing more, sir. This Convention, I think, must have been startled by the demonstrations of fraud which have come to us through the report of the Senate committee in relation to canals. These frauds have been going on for a very long time. We know that the air has been rife with rumors for years that the canals of this State have been outrageously managed. Now, sir, where do we find an Attorney-General that has ever inquired into this matter? Where is there a single instance of an Attorney-General that has inquired personally into the truth or falsity of these charges? The Attorney-General, we all know, may proceed to an inquiry on the ground of public fame, and I ask if any individual merchant, having business lying along the line of the canal or elsewhere, should hear rumors that his clerks or employees were committing frauds, whether that merchant, in the prosecution of that business, with the ordinary prudence which merchants exhibit, would not *inquire* into these matters, whether they would not take means to inquire whether they were true or false? But I would like to know when an Attorney-General has made inquiries of that kind. They have laid supinely upon their oars, and have not protected the interests of the people, or even attempted to do so. It seems to me if the people of this State could have found an Attorney-General who would look into these matters, who would work for their interest, and make inquiries when frauds are alleged, they would be a great deal better satisfied, and a great deal better pleased at the economy of their money, and the saving of the taxes which would result from this vigilance, than the mere empty pleasure of putting some man's name on the ballot on the day of the election that they did not know and never heard

of before. Sir, the gentleman behind me [Mr. Wakeman] has said that he has been very much instructed by his intercourse with his fellow-citizens. Sir, I have been instructed by my intercourse with my own constituents, too; and, sir, those of them with whom I have conversed say that the main hope they have from this Convention is that they will deliver them from the power of wire-pullers and managers of conventions. They want to have their interests placed upon some substantial basis. They wish to have the officers of the State appointed, some one that they know, some one whose character they have previously ascertained, and it is generally the case that they get such a man when he is appointed by the Governor. No party selects a man for Governor who is not well known to the whole State, whose antecedents have not been carefully studied, and whose proclivities are not well understood.

Mr. BAKER—Will the gentleman allow me to ask a question? When have we had a Governor that has instituted or attempted to institute any inquiry into the frauds that are alleged to have been perpetrated?

Mr. GOULD—We have not since this Constitution was established, for the very good reason he has no control over the instruments who should perform the duty.

Mr. BAKER—I believe that the Constitution makes it his duty to see that the laws are executed.

Mr. GOULD—But we practically deny him the power to see that the laws are faithfully executed by withholding from him all control over the officer whose duty it is to make this investigation.

Mr. GERRY—I would like to ask the gentleman a question: whether the statute does not authorize the Governor to direct the Attorney-General in certain cases to proceed against such offenders?

Mr. GOULD—I presume it does not. I think the statute only requires the Attorney-General to act in matters of bribery.

Mr. GERRY—The gentleman is in error.

Mr. GOULD—At all events there is no such practical subordination at present as there should be. Now, sir, that is the desire of my constituents, that we shall have a practical good government. If this Convention provide a good and efficient Governor who shall economize the funds of the State, who will require an honest administration of public affairs, they will be satisfied, even though there are two or three less names for them to vote for when the day of election comes. That is all they require and all they desire, and they will thank you if you will provide for this result in the Constitution which you submit for their consideration.

Mr. CURTIS—It seems to me, Mr. President, that the whole force of the argument of the gentleman from Ontario [Mr. Folger] rested upon his theory of the functions of this Convention, and that that theory was radically wrong. The assumption of his argument was that we are here instructed by the people of the State to make specific changes in the fundamental law. Now, sir, I understand that we are sent here by the people of the State as their representatives, but that they have not specifically instructed us as to

any special point of friction. We are the representatives of the people who have lived for twenty years under the Constitution of 1846, and who have found by experiment that it has worked badly in certain particulars, of which we, as citizens of the State, are cognizant; and since all the people of the State are not competent to come together and devise a remedy, they have sent us here to deliberate for them and to suggest to them what in our judgment are the changes that should be made in the fundamental law. The people have not specifically instructed us upon the subject of the judiciary; they have not instructed us upon the subject of cities; they have not instructed us upon the subject of education; they have not instructed us upon the subject of the appointing power, nor upon the powers and duties of the Legislature. We are simply to turn round and say to them, "In the judgment of your representatives, after due deliberation, the fundamental law of this State should be corrected in certain points which we suggest to you." The whole question which has interested this Convention for the day past has been argued as a question of principle, whereas truly it is only a question of expediency. It is a question of the exercise of power simply, not of original power itself. What is our government? Gentlemen have talked about a popular government as if it were essential to a popular government that every officer should be elected by the people. Sir, if the people of the State of New York choose they will indeed elect every officer from Governor down to the health officer. But if the people of the State of New York are wise they will choose, I think, so far as they can wisely do it, to limit the elective franchise, as was well and conclusively said by the gentleman from Otsego [Mr. Ferry] last night. The proper function of a popular government is first the election of the Legislature, and second the election of the executive power. When the people have the Legislature and the Executive, then they have the government. The rest is method, merely. The limits they may prescribe to the exercise of the executive power is a matter of the merest policy and expediency. Our present question is simply, whether or not it is expedient for the public welfare that the people of this State should be tied up to the selection of one or two candidates for Attorney-General, or whether through the Executive, whom they have elected, they shall have the selection from all the legal talent of the State. It seems to me that any gentleman who has confidence in the people, who believes they are capable of wisely electing the Chief Executive will also believe that the Executive should be allowed the choice of his agents in the execution of his duties. I believe, sir, the people of this State are quite wise enough to see that just in the degree the number of elected officers is reduced just in that degree much of the necessary trouble and friction of the government are saved to them. As the Constitution of this State is simplified it is commended to the affection of the people. And this Convention, sir, just in the degree that it presents a simple fundamental law to the people, who are

quite as intelligent as we are, will make a law which is likely to be accepted by them. When gentlemen speak as if there were some imaginary specter whipping and scourging them on, that specter being the people, jealous of the very shadow of its power, it seems to me, sir, they betray a fatal fear and want of confidence in the people. My fundamental objection to the Constitution of 1846 is that it departs from the true principle of a popular government, in seeking to make every officer that can be made so, elective by the people. I contend, sir, if the people have the control of the Legislature and the control of the Executive, with such limits as their wise experience may dictate, they have a simple, good and strong government; and because, by the very nature of his office, the Attorney-General is a person to advise the Executive, who is the chief executor, as his name imports, of the law, I insist, sir, that the Executive should be allowed to select his own legal adviser, precisely upon the same principle that the Secretary of State or the head of any other department of the administration is authorized to appoint the chief assistant in his department.

Mr. BAKER—I would like to ask the gentleman a question. Is it not true that the Comptroller of this State is as frequently called upon to get advice from the Attorney-General as is the Governor?

Mr. CURTIS—It may possibly be so, sir; but there is in the office of Comptroller and the office of the Attorney-General an essential difference, which I think has been pointed out.

Mr. BAKER—The object of my question is to inquire whether it would not be more proper to give the appointment to the Comptroller than to the Governor, inasmuch as the Comptroller has more occasion to consult with the Attorney-General than the Governor has.

Mr. CURTIS—I think not, for the reason that the Comptroller, being the head of the treasury of the State, is an officer that the people of the State wish to have directly responsible to themselves, for reasons that will commend themselves to every gentleman. Now, sir, I wish before I sit down to add my protest, I, who stand upon this floor, not as the representative of a district, but with other gentlemen who are in this Convention as representatives at large, of one of the great parties into which the people of the State of New York are divided. I wish, sir, in their name, and from my real respect, not for the mob, not for the rabble, which exists in every community, but for the intelligence and conscience of the people of the State of New York, to protest with all my heart against the strain of flattery which has been indulged in upon this floor, and which whenever it begins shows the beginning of the demoralization of politics and of government. And, sir, without the least unpleasant personal reference, I wish to signalize, as an illustration of the fatal spirit of speech which I have in mind, the remarks submitted to the Committee of the Whole yesterday by the honorable gentleman from New York [Mr. Pierrepont], who sits before me at this moment in the opposite corner. Now, sir, not in the least bearing him in mind, bearing no gentleman upon this floor in my mind, thinking

only of the people of this State, and of the United States who control politics everywhere, I wish to warn gentlemen of this Convention against this insidious spirit of flattery to the sovereign power. My experience shows, and the experience of all history shows that those who praise the people most, distrust them most, and fear them most. My experience shows me, sir, that the men who most loudly talk of the people, of humbly obeying the will of the people, of trusting to the people, who fawn upon the dear people, and incessantly extol the sovereign people, are the men who sit in back rooms and make up slates and pull wires by which, consciously and intentionally, the people are everywhere defrauded of their will. Find me anywhere a man who loudly and constantly magnifies the sovereignty and the power of the people, and the necessity of putting everything immediately in the hands of the people, and I will show you, sir, a man who, in the bottom of his heart, absolutely distrusts the people, and who will not hesitate to say that practically, under our caucus system, the people have no control and ought not to have control of public affairs. I live, sir, in the neighborhood of the city of New York. Within the last four years I have seen in that city the most fatal illustrations of this spirit. I remember, sir, and there are gentlemen upon this floor who remember with me, when the red-handed rabble, the most degraded body of men in this country, as bad a body of men as exist in the world, raged through the streets, seized little children, dragged them to the lamp-posts, hunting and hanging men and women guilty of no crime but defencelessness, and color; and yet, the very men who loudest shout in honor of the people, these men who tell us that the people, and the people, and the people, are the only power that should be regarded, were the men who hastened to call these wanton massacres the work of the people; and the wild fury of the murderous New York mob of 1863 was described by these men, as an uprising of the people of New York. Sir, these are the sycophants who, if they lived in monarchies, would fall prostrate and lick the dust before the monarch. The man, sir, who stands servile before the people of this country, the object of whose public life is to flatter the people and not to do what he can to educate and elevate public opinion, which is the government of the country, is the man who, if he were in France to-day, would be the basest tool of Louis Napoleon. Sir, I have said so much upon this subject because it seemed to me that the Convention was losing altogether the due sense of its relation to the people of the State. It is not a body of grovelling slaves; it is a body of representatives of the intelligence and the will of the people. Whenever, therefore, we think that a good government requires that an officer should be appointed, let us tell the people so, sir, and the people, as wise as we, will approve our decision, or equally wise with us will, upon their experience, differ. But I beg gentlemen upon their manly honor not to think that those honest people and those plain farmers among whom they proudly declare that they live, do not see as plainly through all the flattery, the

transparent obsequiousness of public men in public life as we ourselves, and regarding this as it is, simply as a question of the exercise of power, let us decide without regard to this specter of the people whether in our judgment it is better that the Attorney-General shall be appointed by the Executive officer or elected by the whole body of the people.

Mr. KERNAN — I will ask the attention of the Convention to a few suggestions, but after this somewhat protracted debate, I will endeavor to make them very brief. Our government always has been, and we propose to re-organize it with three different departments; the law-making department, the Legislature, elected directly by the people, to make the laws; the judicial department, to declare the sense and meaning of those laws and to administer justice; and the executive department to enforce those laws. By the article under consideration, we propose to organize the executive department, and in my judgment, the question is, upon what *principle* shall the executive department be organized? Shall the various heads of the executive departments be independent, or shall they be united and in some degree dependent upon and subordinate to the chief executive officer of the State. What is needed in the executive department of the State, to give the people a good government? Why, sir, we require in that department, unity and efficiency; and evil comes to the State whenever those intrusted with the administration of its affairs and the execution of the laws, do not act harmoniously and efficiently together. In organizing a city government, is it desirable to have the head of each of the departments independent, each looking to his own department, and disregarding the other; or to have one chief executive officer like the mayor and the other executive officers subordinate to him, so that they shall act in harmony with and be responsible to him, as he is responsible to the people who placed him in power, and charged him with the duty of seeing that the laws are faithfully enforced, and their affairs properly administered? The people should and do have the Governor elected by them, and directly responsible to them for the manner in which the executive department of the government is carried on; he should be charged with the duty of nominating the heads of the executive departments, and be responsible for their conduct to the people. Thus will harmony and efficiency be secured in administering the State government. It seems to me obvious, and I appeal to your judgment if it be not true that you will have an efficient and safe executive department, if you have a Governor elected by the people, and the heads of the various departments selected by him, with the advice and consent of the Senate, which is elected by the people. By this mode we will have all the departments acting in harmony, and the Governor can and will apply the corrective by removal from office, if the subordinates selected by him are inefficient or corrupt. Thus you will really have one body under one head to carry on the State government, and it will be efficient; and we will not have each head of a subordinate executive department, independent of the others, and all of them independent of the

chief executive of the State, which would necessarily lead to discord, inefficiency and maladministration. Gentlemen have inquired here, "Have there been any complaints of the existing system?" Why, I have thought that, while there have been no clamorous complaints, that every thinking man in the State had felt that we had suffered of late years from the want of unity in the executive department of the State of New York. Does any man believe that if the executive and administrative officers, who have been publicly charged with inefficiency, dereliction in duty, and even corruption in office, had been appointed by the Governor rather than elected, that he would have dared to retain them in office? Has it not been generally felt and complained of, that there has been a want of dignity, efficiency and unity in the government of the State of New York of late years? Has it not been said, over and over again, that we really have no responsible executive government? We have, rather, seven or eight heads of departments, each acting upon his own responsibility and according to his own policy, and neither feeling that he is bound to act in harmony with or in subordination to the Governor of the State, who is, in theory, the great executive officer of the people, and who should be held by them responsible that the State government is properly carried on. I shall not ask gentlemen to listen longer to these suggestions. I ask them only to decide in favor of the principle which, in organizing the executive department, will tend to give us the best government. The people of the State make their laws; they elect a Governor who is to execute them and administer their State affairs; they hold him responsible that this shall be well done. Subordinate heads of departments are necessary to aid him. Shall these be selected through political conventions and popular elections, or by the Governor, with the advice of the Senate? Which mode of selection will give us the most responsible administration of the executive branch of the government? To have a proper administration of public affairs we must give the chief executive some power, and then we can hold him responsible. If he has no voice in selecting the heads of the executive departments he will feel no responsibility. I submit, sir, that we made a mistake, and the people of the State of New York, who are an intelligent, thinking people, believe that we made a mistake, when we organized a seven-headed executive, instead of having an executive consisting of a Governor with heads of departments, appointed on his nomination, subordinate to him, and for whose acts he would be held responsible to the people. I shall say nothing by way of argument in answer to the cry so often put forth here that in providing for the appointment rather than the election of these officers we are taking power from the people, distrusting the people. This does not deserve any answer. Why, sir, we are a portion of the people. Gentlemen talk as though we were a body of men above the people, and with interests different from theirs, and trying to take power away from them. We are a mere committee of the people, sent here in their behalf to devise the best form of Constitution for them, and

ourselves as a portion of them, and we shall go back to them with it, and if they adopt it we are with them to share the good or bear the evil it produces. It is only a question as to how certain power which concededly belongs to the people shall be exercised, to the end that they may have a good, efficient, honest and economical State government. It seems to me, gentlemen forget the true source of power and the nature of our government when in this connection they declaim about taking power from the people. In every government by the people they must intrust the exercise of their power to execute the laws and administer public affairs to agents; and they will select these agents by popular election or by other modes, as the one or the other may be best adapted to secure in the officer the characteristics required for his position. For these reasons I shall vote for this amendment, hoping that we shall also, as to some other officers, return to a system which will give us a purer, more economical and more responsible executive government than we of late years have enjoyed.

Mr. BARKER moved the previous question upon the pending amendment.

The question was put on ordering the previous question, and was declared carried.

The ayes and noes were called for, and, a sufficient number seconding the call, were ordered.

The question was then put on the amendment of Mr. Duganne, and it was declared lost, by the following vote:

Ayes—Messrs. A. F. Allen, C. L. Allen, Andrews, Barker, Barnard, Barto, Beadle, Beckwith, Bell, Bickford, Bowen. E. Brooks, E. P. Brooks, J. Brooks, Cassidy, Chesebro, Clinton, Corbett, Curtis, Daly, Duganne, C. C. Dwight, T. W. Dwight, Ferry, Gould, Greeley, Hale, Hand, Hardenburgh, Harris, Hatch, Houston, Kernan, Ketcham, Landon, Ludington, Merrill, Miller, Opydyke, Paige, A. J. Parker, President, Prosser, Rathbun, Reynolds, Roy, Silvester, Strong, Van Campen, Van Cott—60.

Noes—Messrs. Alvord, Archer, Axtell, Baker, Ballard, Bergen, E. A. Brown, Cheritree, Clarke, Cochran, Conger, Cooke, Endress, Farnum, Field, Folger, Fowler, Francis, Fuller, Garvin, Gerry, Goodrich, Grant, Graves, Gross, Hadley, Hammond, Hiscock, Hitchcock, Hitchman, Hutchins, Kinney, Krum, A. Lawrence, M. H. Lawrence, Lee, Lowrey, Mattice, McDonald, Merwin, More, Morris, Murphy, Pierrepont, Potter, Prindle, Robertson, Root, Rumsey, L. W. Russell, Schell, Schoonmaker, Seaver, Sheldon, Sherman, Smith, Spencer, M. I. Townsend, S. Townsend, Verplanck, Wakeman, Wales, Weed, Wickham, Williams, Young—66.

Mr. GERRY—I move to amend the first section by striking out of lines five, six and seven, the words:

"No person shall be elected to the office of Attorney-General who shall not have been a counselor-at-law of this State for the last ten years."

Mr. BECKWITH—I also wish to offer an amendment to the same section, to strike out wherever they occur in the section, the words "State Engineer."

Mr. GERRY—My object in offering that amendment, is to strike out from those lines the disqualification of a person to be elected to the office of Attorney-General who shall not have been a counselor-at-law of this State for ten years. I oppose this disqualification on two grounds. The first is, that it has not been inserted in any previous Constitution of this State, and is an innovation in that respect. Second, it may act to the very serious prejudice of many intelligent gentleman of the bar, who may have resided in a sister State for a number of years, who may be in every other respect qualified by age and legal ability and learning to fill the position of Attorney-General, and who may be acceptable to the people, and who yet, if not actually counselors-at-law of this State for ten years will be rendered ineligible to the office. It is, therefore, a very serious disqualification, without any real cause, for it is not to be presumed that a man would be selected for the high office of Attorney-General who is not qualified by age and learning for that position, and there are a great many lawyers in this community who are no more qualified after they have been counselors-at-law for ten years to fill the office of Attorney-General than they were after they had been five years at the Bar.

Mr. BECKWITH—I have offered an amendment to strike out the words "State Engineer," for the following reasons. I desire to call the attention of the Convention to a few facts, with regard to that office. Prior to the adoption of the Constitution of 1846, no such officer was known to the Constitution. It will be seen, if gentlemen will look at the report of the Committee on Canals, that it is proposed there to dispense with the State Engineer in regard to the canals. And if gentlemen will look at the evidence laid on their tables, taken by the Senate committee recently, they will find that that office, instead of being of any practical benefit to the State, has been an occasion of much pecuniary loss to the State. I desire to call the attention of the Convention to a few facts in regard to it. They will find in the evidence, on page 29, in regard to the Chenango canal, that in the year 1864, Mr. Nichols, who was the engineer, who laid out and located that canal, made certain estimates as to its construction. It will be borne in mind that these estimates were made in 1864, when everything was at the highest war prices, both materials and labor. Soon after, another engineer went upon those works, and he made an estimate of the cost of them, and his estimate exceeds the estimate of the former engineer near \$400,000. Take, for instance, section five. The first engineer, in 1864, at the time of war prices, estimated the cost at \$30,309; the subsequent engineer estimated it at \$60,555, just about double, and if you will follow it through you will find that the second engineer estimated the expenses at about double pretty nearly in all cases, both in the construction of the sections and in the building of the locks. Now, why this great difference? Were these engineers, or either of them, incompetent? There must be some reason for this great difference in the two estimates; that in 1864, which is the lowest estimate, at the time when everything was

very high, materials and labor, proves to my mind one of two things, either that the engineers, or one of them, were incompetent, or that the subsequent engineers, for some reason or other—because, perhaps, some friend of his desired to obtain the contract, and could by some management obtain contracts under it; for that reason he felt desirous to give him as large an amount for doing the work as he possibly could. It shows further that these estimates of the engineers can be very little relied upon. They disagreed to an amount of several hundred thousand dollars, one putting it nearly double what the other put it. If gentlemen will look further into the evidence they will find in a great many instances, these facts exist in regard to other improvements and matters of repair where the difference is equally great. Even if the State Engineer is elected, it will be in his power thus to favor his particular friend. For some reason or other some undue influence may be brought to bear upon him by which he may make a very large estimate. Gentlemen will bear in mind that the contracts in regard to this canal were made on the largest estimate, so that contractors, instead of building the canals for the prices fixed by the first engineer, obtain the prices fixed by the second engineer. Why is this? Furthermore, on looking at other pages, gentlemen will see that there are other similar contracts. If they will look at the testimony of one witness in particular, Mr. Mead, they will find that when complaints were made to the Canal Commissioner, he said in substance it was out of his power to control the engineers for the reason that they were State officers, created by the Constitution. The engineers make and submit to the canal board or the contract board of the canals their estimates, and the board generally relied upon these engineers and upon their estimates in letting contracts. Let me call the attention of the committee to another fact. It seems that the engineer of the Champlain canal, shortly after the contract was let to keep a portion of that canal in repair, borrowed from the contractor \$4,000, and gave his note for that sum without any other security. Now, why is this? We all know that the borrower is a servant to the lender. Why was this money loaned to this man without any security except his individual promise. Is it not giving to the contractor power and influence over the engineer? I think it is. I do not mean to charge that the engineer of the canal department has been corrupt, but I do take it upon myself to say that undue influence may be brought to bear upon the engineer's department. The State Engineer has subordinates who take charge of them. These division engineers are, I am satisfied from reading the evidence, under the control of these contractors, under the control of men who are to work on these canals. Various influences are brought to bear upon them, so that they can control them to a very great extent, and the interests of the State have been sacrificed to a very great extent. I am fully persuaded, from an examination of the evidence which has been laid on our tables, it is for the interest of the State not to continue this office? If it be, I ask gentlemen if it is necessary

to continue it as a constitutional office? Why not leave it to the Legislature? One gentleman remarked on a former occasion that the Engineer had duties to perform in regard to the railroads. What were these duties? Merely to receive reports from the railroads and compile statements from them, to present to the Legislature. This could be as well done by the Surveyor, or by some other officer. It will be found, on looking over the expenses of the engineer department, that they amount to a very large sum independent of all these frauds. And it is the opinion of some of the witnesses, whose evidence has been laid on the tables, that a great share of the frauds on the canals, have arisen from the neglect or undue influence brought to bear upon the engineers in charge. Under these circumstances I think it wise to strike out of the Constitution those words, "State Engineer," so that it will be in the power of the Legislature, if necessary, to employ engineers whenever their services are required. This can be done. Who would not, if the canals belonged to him as an individual, prefer some good, substantial foreman accustomed to the work to any of your engineers employed as sub-engineers or division engineers on the canals? I trust that this Convention will strike out of the Constitution this office, and if anything should happen that it should become necessary that it should exist let the Legislature create it for a special purpose. I think the State would save a large amount of money by the employment of an engineer as foreman to take charge of the work on the canals or any other public works. The State owns, I believe, about 70,000 acres of land. Large quantities formerly belonging to this State have been transferred to railroads, and otherwise disposed of. The duties, therefore, of the Surveyor of the State will not be made too onerous by throwing upon him the duty which is now performed by the Engineer in regard to railroads.

Mr. SPENCER—I am in favor of the amendment proposed by the gentleman from New York [Mr. Gerry], but for reasons entirely different from those stated by him. It should be remembered by many members of the Convention that this amendment is identical with the one proposed by myself in Committee of the Whole, but which was not further acted upon in consequence of the committee rising and reporting progress while the amendment was still pending. I there gave some reasons in favor of the proposition to strike out this provision in relation to the Attorney-General, and also in relation to the State Engineer. But, in addition to those reasons, I desire to state still further that, if we are to adopt a principle of prescribing special or particular qualifications of the officers which we may designate in the Constitution which we are framing, it will be wise to go through the whole list of those officers, and prescribe qualifications for the whole. If it is necessary that the Attorney-General shall be a counselor-at-law of a particular standing, why not necessary also that the Secretary of State shall be a skillful chirographer? Why is it also not necessary that the Comptroller should be an experienced accountant, and also necessary that the Treasurer should in some manner prove his fidelity in the care of a

similar trust? You may extend the application of this principle through the whole or nearly the whole list of officers to be prescribed in the Constitution. It is certainly more necessary that the judicial officers of the State should possess peculiar qualifications than that the Attorney-General should. Why not provide that the judge of your court of appeals, or the judges of the supreme court, or the judges of your county courts, shall have a particular standing? Why not provide further that they shall, before they are allowed to hold office, be examined by some committee, to be appointed by the Legislature or otherwise, and that they should pass the necessary examination?

Mr. GERRY—I desire to modify the amendment I offered, so it will read as follows:

Amend the first section by striking out in the seventh line thereof the words "for ten years."

Mr. BECKWITH—The change which I propose is simply to strike out the word "Engineer," then it will read "and State Surveyor."

Mr. ALVORD—I was in hope the gentleman from Clinton [Mr. Beckwith] would have adhered to the entire of his amendment. It seems to me it has been demonstrated in this State that we need no special State officer to be called an engineer. So far as regards the necessity for an engineer, his duties can be as well performed by the employment from time to time by those officers who shall have charge of the canals. Such engineers can be employed at such times as occasion may require, and discharged when no longer needed, and there will be no necessity for an engineer-in-chief. I wish to speak more particularly in regard to the Surveyor-General. There was a time in the history of our State, when it owned a large quantity of lands, which were in a state of nature, which necessitated their being brought into shape and surveyed for the purpose of being sold in the market. That work has already been done, and the State to-day is owner of about seventy thousand acres of land yet unsold and remaining to the State as the first hand. These have already been surveyed out, and arranged and divided into sufficient sized lots or parcels for sale. The Surveyor-General's office, so far as that is concerned, is nothing more or less than a mere appendage to the Commissioners of the Land Office. For, under the laws of the State, they entirely control all the lands, and the office of the Surveyor-General is held in truth by a deputy who reports to the Commissioners of the Land Office, from time to time, as required, the condition of the public lands as they appear on the records in his office. If there is need for the services of a practical surveyor in any part of the State, some local surveyor can be procured and made a deputy for that special duty. This has been done, I believe, in every instance during the last twenty years, a local surveyor has been made a deputy of the Surveyor-General to make the necessary examination and report to this clerk—he is nothing more or less than a clerk for the Commissioners of the Land Office. It strikes me if this is left out, the Legislature can by law take care of the matter, and if any necessity exists for an office of this kind make it a bureau of the office

of the Secretary of State, as the Commissioners of the Land Office hold their various meetings from time to time in the Secretary's office, and the deputy Secretary of State is the clerk of the Commissioners of the Land Office. Therefore, there is no earthly necessity whatever for the continuance of such an officer in this State as the Surveyor-General. I doubt whether there is, from any experience we have had, any necessity for continuing the office of what we call the engineer-in-chief. We can always have an engineer of sufficient ability, from time to time, as occasion shall arise, by getting these engineers throughout the country for the time being to do the work of the head engineer, and when through with the work we can discharge them, and if occasion arise again can put others in their places. I see no sort of necessity for the continuance of this office.

Mr. FULLER—I stated to the committee yesterday, and I desire to repeat it to-day, that the committee reported this section to the Convention for their consideration that they might take such action upon it as they saw fit, not knowing what action they would take upon the report of the Canal Committee. I shall be content whether this officer is retained or whether he is stricken out. I only desire to add to what has been said by the gentleman from Onondaga [Mr. Alvord] that the only other duty performed by the State Engineer and Surveyor besides those connected with the administration of the canals is the duty of receiving, digesting and transmitting the annual reports of the different railroads of the State. By statute, the railroads of the State are directed annually to make a minute report of all their business to the State Engineer and Surveyor. It is made his duty to digest these reports and make a report upon them to the Legislature at the commencement of each session. Perhaps this duty might be as well conferred upon some of the other officers of the government. I am inclined to the opinion that it might, and also that the duties of the Surveyor-General may also be devolved upon some other officer, and that there is no necessity for any such officer being provided for in the Constitution of the State. While I am up (I do not desire to rise again) I will say one word in relation to the amendment proposed by the gentleman from New York [Mr. Gerry]. Those portions of the article which he proposes to strike out were thought by some members of the committee to be of some importance. I do not think myself that they are of any material importance. I yielded to their desire to insert them upon the ground that they would do no hurt if they did not do any good. I am content that they should be stricken out, and perhaps it is better that they should be, rather than to have the Constitution lumbered up in this manner with useless provisions.

Mr. BECKWITH—I will move to amend the amendment by including the Engineer and Surveyor, and then ask for a division of the question when it comes to a vote.

The CHAIRMAN—The amendment is so modified.

Mr. E. BROOKS—I should be very sorry, for one, to have the amendment offered by the gentleman from Clinton [Mr. Beckwith] adopted by

the Convention: In my judgment, it is placing a small estimate upon the duties of the State Engineer, to suppose those duties have reference mainly and solely to the canals of this State or that they have reference merely to the receiving of reports from the 3,000 miles of railroad now established in this State. One of the most important duties connected with that officer is in connection with what may be called lands under water. There have no greater abuses grown up in this State, during the last twenty years, than those in granting lands under water on Long Island, in Richmond county, and along the Hudson to Albany on each side of the river. It is very important that there should be a State Engineer to examine and report, whenever applications are made for a grant of land under water for private uses, sometimes represented to be for public uses, when they are really valuable grants intended for the individual benefit of persons living along these water-courses. If for no other purpose than this, it is necessary we should have a State Engineer and Surveyor to discharge that duty in the interest of the State.

Mr. VAN COTT—I am opposed to the amendment of the gentleman from Clinton [Mr. Beckwith]. I think it is an insidious attempt to invade the rights of the people. Nobody pretends that we can dispense with the services of an Engineer, but we have already settled that nobody but the people are competent to select those who are competent to perform public service. This amendment diminishes the number of officers to be elected by the people. As it is one of the greatest necessities, I desire that the people should be brought—some 800,000 of them in this State—to the polls frequently, and that they should keep on voting for a great number of persons. I think, as I said before, the amendment is an insidious attempt to invade the rights of the people. I am in favor of the amendment of the gentleman from New York [Mr. Gerry]. He is opposed to requiring a residence in the State of New York of ten years before a gentleman can be an Attorney-General of the State. A great many people will come here from foreign parts within ten years who will think the office of Attorney-General a very desirable one, and it would be an unjust interference with the rights of these people to render them constitutionally ineligible to this office. And I speak in the interest of another class. Some gentlemen within a period of much less than ten years have put off their gray uniforms and have come from various sections of the South to settle in the city of New York, and they are very convenient in certain political relations. I would not render these gentlemen from the South, who have thus changed their employment, ineligible to this office. I am in favor of enlarging the amendment of the gentleman from New York, and at the proper time I shall move to strike out the provision requiring that the Attorney-General shall be a counselor-at-law. I think the people have shown within the last twenty years that it was possible to elect to that office a person who was not lawyer enough to hurt him and who might as well not have been a lawyer at all. Besides, I think if the people desire a doctor in the office of Attorney-General

they should be at perfect liberty to choose a doctor. I am therefore in favor of striking out all limitations whatever upon the power of the people in making a selection for the office of Attorney-General.

Mr. BECKWITH—I wish to make a remark in reply to the gentleman from Richmond [Mr. E. Brooks]. He says he wishes to retain the office of Engineer because of the applications for lands under water. I have had some experience in regard to that matter. I have been engaged in applications of that kind, and those applications are always made to the land office. In all the cases in which I have had any experience, no Engineer of the State—either State Engineer or deputy—ever appeared and made any survey or even examined the property. Such applications are made to the land office, and are there granted if the officials are satisfied the application is a proper one. I do not think, therefore, the office should be retained for that purpose. The Commissioners of the Land Office could make all due investigation, and if it be a matter of great importance they can employ and send an engineer to make the examination for them. He can do it as well and will be less likely, in my judgment, to be influenced by those who are interested in the enterprise than if he was a State officer.

Mr. GREELEY—I call for the previous question on the amendment.

The question was then put on ordering the main question, and it was declared carried.

The question was put on the amendment of Mr. Beckwith.

Mr. BECKWITH—I ask a division of the question.

The question was then put on the amendment of Mr. Beckwith to strike out the words "State Engineer" wherever they occur, and it was declared carried.

The question was then put on the remaining part of the proposition to strike out "the State Surveyor" and it was declared carried.

Mr. CONGER—I call for the ayes and noes on the amendment.

The PRESIDENT—The call is too late.

Mr. CONGER—The President submitted the question on the separate parts of the amendment. Now, I ask a vote on the whole proposition.

The PRESIDENT—The Chair informs the gentleman that it is not susceptible of that division. It is a whole question which was divided.

The question was then put on the amendment of Mr. Gerry, to strike out in the seventh line the words "for ten years."

Mr. HALE—I move to further amend—

The PRESIDENT—No further amendment is in order, the previous question having been ordered.

Mr. GERRY—I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put on the amendment, and it was declared carried by the following vote:

Ayes—Messrs. A. F. Allen, C. L. Allen, Archer, Axtell, Baker, Barnard, Barto, Beadle, Bell, Bickford, E. Brooks, E. P. Brooks, Cassidy, Conger, Cooke, Corbett, Curtis, T. W. Dwight, Endress, Ferry, Field, Fuller, Garvin, Gerry, Graves, Gree-

ley, Gross, Hale, Hand, Harris, Hatch, Hiscock, Hitchcock, Hitchman, Houston, Kinney, M. H. Lawrence, Livingston, Lowrey, Ludington, Matrice, More, Morris, Pierrepont, Potter, President, Prosser, Robertson, Root, Roy, L. W. Russell, Schell, Seaver, Silvester, Shorman, Spencer, M. I. Townsend, S. Townsend, Verplanck, Weed—60.

Noes—Messrs. Alvord, Ballard, Beckwith, Bowen, E. A. Brown, Clinton, Cochran, Daly, C. C. Dwight, Farnum, Folger, Fowler, Francis, Goodrich, Gould, Grant, Hadley, Hammond, Hutchins, Kernan, Ketcham, Landon, A. Lawrence, Lee, McDonald, Merrill, Merwin, Miller, Murphy, Opdyke, Paige, Rathbun, Reynolds, Rumsey, Schoonmaker, Sheldon, Strong, Van Campen, Van Cott, Wakeman, Wales, Wickham, Williams—43.

Mr. GERRY—I offer the following amendment, for the purpose of having the entire sentence to read accurately.

The SECRETARY proceeded to read the amendment as follows:

Insert in the sixth line thereof after the word "not," the words "at the time of his election be;" and strike out the words "have been" in such line, so that the sentence shall read:

"But no person shall be elected to the office of Attorney-General who shall not at the time of his election be a counselor-at-law of this State."

Mr. GREELEY—I move to strike out the entire proviso, beginning with the words "and no person."

Mr. VAN COTT—A majority of the members of this Convention are lawyers, and I think it would be very indecorous for us to say to the people that in the selection of any officer of State they shall be limited to the election of a lawyer.

Mr. FERRY—I have not the least fear that the people will make choice of a blacksmith, I do not think there is any need of any provision to guard them against any imprudent act. That is what I call showing a distrust of the people. I have no doubt that the people will make a correct choice of an Attorney-General, and he will undoubtedly be a lawyer.

Mr. SPENCER—I call the attention of the Convention to the fact that, as the provision now reads, it requires the Attorney-General to be not only a lawyer, but it requires him to be a practical engineer. By the amendment of the gentleman from Clinton [Mr. Beckwith], the words "State Engineer and Surveyor" were stricken out and those words only. By the amendment of the gentleman from New York [Mr. Gerry], the words "ten years" were also stricken out, so that the provision will now read, "and no person shall be elected to the office of Attorney-General who shall not have been a counselor-at-law of this State, and no person shall be elected to the office who shall not then be a practical engineer."

The PRESIDENT—The Chair understands that to be a practical *political* engineer. [Laughter.]

Mr. KETCHAM—I acknowledge the paternity of the provision which the amendment of the gentleman from New York [Mr. Gerry], seeks to strike out. I will simply state in relation to it, that it was inserted because I knew of a case where a young man had been elected Attorney-

General who was not a lawyer, and never became one, and in my innocent ignorance of the necessities of the people, I thought it better the Attorney-General should be a lawyer of some experience. But the arguments I have listened to, coming from gentlemen who have the interests of the people specially in charge, have convinced me of the entire impropriety of restricting them in any exercise of power they may see fit to use. Perhaps, 800,000 people, scattered over the State, will make a more judicious selection than any person like the Governor whom they may delegate. I hope the amendment of the gentleman from Westchester will prevail. If they are to select a man, I do not see why they may not, if they chose, select a brick mason or a doctor as well as a lawyer.

Mr. GERRY—I have listened to the advocacy of the amendment of the gentleman from Westchester by my friend from Kings [Mr. Van Cott], and am so perfectly convinced of the sincerity of his statement by his eloquence in regard to the matter that I am willing to accept the amendment. There is no such limitation clause in the Constitution of 1846 or in any previous Constitution of the State. I accept the amendment of the gentleman from Westchester [Mr. Greeley], and I do it because I offered this amendment under the supposition that the majority of the Convention were in favor of imposing some limitation. I, for one, am not afraid to trust the people, notwithstanding the flattering eulogy which has been pronounced upon them by the gentleman from Richmond [Mr. Curtis] this morning.

The question was put on the amendment of Mr. Gerry, and it was declared carried.

Mr. VERPLANCK—I move to reconsider the vote by which this Convention refused to strike out the words "Attorney-General."

Objection being made, the motion was laid on the table.

Mr. GREELEY—I move the previous question on the section.

Mr. VERPLANCK—Will the gentleman be kind enough to withdraw his motion for a moment to allow me to make a few remarks with reference to a high official of this State?

Mr. GREELEY—Certainly, if you will renew it.

Mr. VERPLANCK—When the previous question was moved on the amendment to strike out the words "Attorney-General," I requested the mover to waive that motion to enable me to present to the Convention a few remarks in regard to an high official of this State. The request was refused. I take this opportunity of saying what I then wished to say. The question under consideration was the manner of electing the Attorney-General. The gentleman from Columbia [Mr. Gould] stated that "these elective officers lay supinely on their backs, and did not pay attention to their duties." The gentleman from Oneida [Mr. Kernan] said "these officers had been charged with being derelict, inefficient and corrupt, and the Governor, if he had had their appointment, would have removed them." While I do not suppose that the gentleman referred to the Attorney-General, yet as the manner of electing that officer was the pending question, I am un-

willing that the remarks should go into the published debates of this Convention, without giving to the gentleman an opportunity to disclaim any intention to disparage the character or the official position of the present Attorney-General. After an intimate acquaintance with that gentleman of nearly thirty years, I am safe in saying that a more honorable or honest man does not live than General Martindale, the Attorney-General of the State of New York.

Mr. KERNAN—I had not the slightest idea of injuring the Attorney-General. I was speaking of the principle where the officer was to be appointed by the Governor, and where there were complaints upon grounds sufficient to cause the Governor to remove the officeholder if he had the appointment. I take great pleasure in saying I have never heard any complaint of the present Attorney-General. I did not intend any disparagement in the remarks I have made.

Mr. RUMSEY—I offer the following amendment:

Add after the word "Governor," in line five, the words "except the Attorney-General, who shall hold his office for four years."

I do not propose to make a speech on that amendment. I offer it simply because I think it is an amendment that ought to pass. Every gentleman knows that the duties devolving upon an Attorney-General are different in a very great degree, from those that arise in the ordinary practice of the law. He can scarcely, within two years, become familiar with that class of duty. It is important that the interests of the State be well taken care of by him; and after he has held it for two years, he has scarcely become competent to perform those peculiar duties. That is all I have to say upon the subject.

Mr. VERPLANCK moved the previous question on the adoption of the first section.

The question was put on ordering the previous question, and it was declared carried.

The question was then put on the amendment of Mr. Rumsey, and it was declared lost.

The question was then put on the section as amended, and it was declared to be adopted.

The SECRETARY read the second section as follows:

SEC. 2. The Treasurer may be suspended from office by the Governor, during the recess of the Legislature, and until thirty days after the commencement of the next session of the Legislature, whenever it shall appear to him that such Treasurer has in any particular violated his duty. The Governor shall appoint a competent person to discharge the duties of the office during such suspension of the Treasurer. The Legislature shall inquire into such suspension of the Treasurer, within thirty days after the commencement of the next session. And the Treasurer may be removed from office, for violation of duty, by a vote of a majority of all the members elected to each branch of the Legislature, after he shall have received a copy of the charges against him, and have had an opportunity of being heard in his defense.

Mr. E. BROOKS—The words in the eighth line "of the Treasurer," are a mere repetition of

the seventh line, and entirely unnecessary to the sense. I move to strike them out.

The question was put on the motion of Mr. E. Brooks, and it was declared carried.

There being no further amendments, the Secretary proceeded to read the third section as follows:

SEC. 3. Each of the officers in this article named, shall, at stated times, during his continuance in office, receive for his services a salary which shall be established by law, and which shall not be increased or diminished during the term for which he shall have been elected; nor shall he receive to his use, any fees, costs or perquisites of office, or other compensation. And all fees and other moneys received by any such officer (except his salary), and all costs or allowances of legal proceedings recovered by the Attorney-General, shall be accounted for and paid into the State treasury.

Mr. PROSSER—I move to amend as follows: Add at the end of the fourth section the words "not inconsistent with any provision of this section." In case the Convention should adopt the report of the Committee on Canals, dispensing with the Canal Board and the Contracting Board, the amendment which I offer I think is necessary. As the section reads now, as reported by the committee, these several officers have the same powers and duties now prescribed by law; and in case, as I remarked before, we should concur with the report of the Committee on Canals, some of these duties and powers will be abolished, and the amendment I propose rendered necessary.

Mr. GREELEY—I would suggest that the word "other" needs amendment. It should be, "not inconsistent with any article of this Constitution."

Mr. PROSSER—That is so. I will modify it. The amendment of Mr. Prosser was so modified.

The question was then put on the amendment, and it was declared adopted.

Mr. VAN CAMPEN—I offer the following amendment:

SEC. 5. There shall be a department of statistics, having charge of the registration of births, marriages and deaths, the census, and such other subjects of inquiry as may be provided for by law. The superintendent of this department shall be appointed by the Governor, with the advice and consent of the Senate, and his compensation and term of office shall be determined and provided for by law.

I offer this, sir, with some diffidence, as some gentlemen have suggested that this department properly comes under the Secretary of State. I have had some consultation in regard to the matter, and the opinion of some gentlemen who are well acquainted with the Department of State is that if it is left under his charge we shall have no efficiency, that we shall not accomplish the objects sought to be accomplished by the amendment I have offered. The importance of this department I think every legal gentleman will fully comprehend, and in fact every gentleman who has taken the trouble to inquire into the necessity for, and the advantages which would arise from, the establishment of such a department. I therefore make the motion.

Mr. GREELEY—The Secretary of State used to be the second officer in the State. We have been taking away the power from that office and virtually destroying it for the last twenty years. I trust this amendment will not prevail; but if any bureau of statistics is to be formed, it will be formed by law, under the Secretary of State. There is no need of manufacturing more offices by the Constitution.

Mr. ALVORD—I entirely agree with the gentleman from Westchester [Mr. Greeley]. The difficulty has been the diffusion of power, instead of its concentration in those who should really be the heads of government at Albany. I hope before we get through with our labors, we shall do away with half a dozen offices that have been created for the purpose of taking away the power from those officers. The office of superintendent of the banking department should be put back where it belongs, in the Comptroller's office. The department of insurance should also go there. The superintendent of public instruction should go to the Secretary of State; and this proposition of the gentleman from Cattaraugus [Mr. Van Campen], should be done by a legislative act, and that department should be made a bureau in the Secretary of State's office. The difficulty with regard to this matter is that we have been diffusing power, creating heads of departments, having responsibility nowhere. For that reason I hope the amendment will not prevail.

Mr. VAN CAMPEN—I withdraw my amendment.

Mr. BALLARD—I move to amend the article by adding thereto the following:

SEC. 5. The office of State Engineer and Surveyor is hereby abolished.

We have, by a very expressive vote to-day, refused to provide for the election of these two officers, and from that I infer that this Convention desires to abolish this office. As it now stands, there is nothing to prevent the Legislature, at the next session or at some future session, from recreating this office, and providing for the election of the officers. It seems to me, therefore, that we should now express in this Convention our opinion that these offices should be abolished.

Mr. GREELEY—I wish to move to amend the amendment by adding "to take effect on the 1st day of January, 1869."

Mr. BALLARD—There will be an election this fall for those two officers. Section first provides that this Constitution shall take effect on the first day of January; and as they cease on the thirty-first of December, 1868, that obviates the necessity of the amendment of the gentleman from Westchester. It ceases at that time, a year from next fall; and if this section is adopted no one will be nominated.

Mr. FULLER—I trust sir, that that part of the report of the Canal Committee which dissevers and separates the connection of the State Engineer from the management of the canals will be adopted; and if it is adopted, there will be no necessity for any State Engineer after the first of January, 1868. It is very proper, therefore, that we should provide in this Constitution that it shall cease after 1868.

Mr. FOLGER—This office is abolished by the Constitution, or will be, and in consequence of the abolition of the office after the first of January, 1868, there will be a great many duties which must be transferred by law. The amendment of the gentleman from Westchester [Mr. Greeley], therefore, ought to be adopted, in order to give the Legislature time to transfer these duties to other officers.

Mr. BALLARD—I accept the amendment of the gentleman from Westchester [Mr. Greeley].

Mr. COOKE—I would suggest to the mover of this amendment that the same result can be reached by restoring in the first section, in the tenth line, the words "State Engineer and Surveyor." We are to elect next fall a State Engineer and Surveyor for two years. By restoring the words in that line, the term of office will expire on the first of January, 1869; and that is just what is proposed to be accomplished by adding this new section.

Mr. ALVORD—It strikes me that the effect of the motion of the gentleman from Cortland [Mr. Ballard], as modified by the gentleman from Westchester [Mr. Greeley], goes to show that in the opinion of this Convention, it will not be right for the Legislature to undertake to get up this office hereafter. I grant that, so far as our action is concerned, restoring those words in line ten of the preceding section would accomplish the same object; but for the purpose of showing clearly and conclusively that, in our opinion, no such office should be created, I think it is well enough to adopt the proposition of the gentleman from Cortland [Mr. Ballard], as amended by the gentleman from Westchester [Mr. Greeley].

Mr. COOKE—I am opposed to this, because, notwithstanding the prohibition, the Legislature might provide for the same office in substance under some other name. I do not think we can sit here and adopt provisions in the Constitution by which we can prevent the Legislature from creating this new office, unless it is done by some general clause. The provision simply is that the office of State Engineer and Surveyor shall be abolished. It seems to me that it accomplishes nothing whatever. If it is competent, under the Constitution as we shall leave it, for the Legislature to establish such an office, why they may restore it. I do not understand that this provision will prevent the Legislature from providing for some other office substantially the same, under another name. I move to so amend the amendment of the gentleman from Cortland [Mr. Ballard].

Mr. BALLARD—I rise to a point of order: that the amendment of the gentleman from Ulster [Mr. Cooke] is not germane to the amendment that I offered.

The PRESIDENT—The Chair understands the intention of the gentleman from Ulster [Mr. Cooke] to be to make this harmonious, to reconcile it, and therefore it is germane.

Mr. RATHBUN—I must confess that I am in a great fog about this matter, or else we are doing something that really we have no power to do. This Constitution that we are endeavoring to prepare will not be passed upon until the election

of 1867, and yet we are providing in it for certain things to be done at that same election—

SEVERAL DELEGATES—No, no.

Mr. RATHBUN—That, I think, is not right—

Mr. BALLARD—Will the gentleman give way one moment? The motion of the gentleman from Ulster [Mr. Cooke] to amend section 6, it seems to me, is not in order. The section is already adopted, and it is now too late to offer an amendment to that section.

Mr. COOKE—I offer this amendment—under the order of amendments generally. I understand that we can make a whole article harmonious by general amendments, after the adoption of each and every section *seriatim*.

The PRESIDENT—The gentleman from Ulster [Mr. Cooke] is right.

Mr. BELL—It occurs to me that if the gentleman from Cortland [Mr. Ballard] will look at this matter again, he will see that the amendment of the gentleman from Ulster [Mr. Cooke] accomplishes precisely the same thing that he wishes, and in a much better way, and I hope it will be adopted.

The question was put on the amendment of Mr. Cooke, and it was declared adopted.

The question was put on the amendment of Mr. Ballard, and it was declared adopted.

Mr. RUMSEY—I move to amend section 2 by striking therefrom all after the word "Treasurer" in line seven. I think, if the committee who reported this section had provided for another very large class of officers whom it may be necessary to remove, in this same section, it would have been all right; but, by striking this out, the section will stand now precisely as it stands in the Constitution of 1846. That Constitution makes another provision which is essentially important, and which will cover the balance of this section, and include not only the State Treasurer, but all other officers. I refer to section 7, article 10, which provides that:

"Provision shall be made by law for the removal, for misconduct or malversation in office, of all officers (except judicial) whose powers and duties are not local or legislative, and who shall be elected at general elections, and also for supplying vacancies created by such removal."

The provision of that section which will remain is entirely proper, for in case of emergency it authorizes the Governor to suspend the Treasurer, and then leaves him subject to the operation of this subsequent section 7, of article 10, for the removal by the Legislature, under the laws which they shall provide, and we shall be obliged to have a provision of that kind, for the purpose of meeting the case of other officers than the Treasurer. It will reach those other officers, and the Treasurer may just as well be included in it, and it will answer every purpose. I therefore propose to strike out that portion of it.

Mr. FULLER—The Constitution of 1846 contains the first part of this section, as follows:

"The Treasurer may be suspended from office by the Governor during the recess of the Legislature, and until thirty days after the commencement of the next session of the Legislature, whenever it shall appear to him that such Treasurer has, in any particular, violated his duty.

The Governor shall appoint a competent person to discharge the duties of the office during such suspension of the Treasurer."

The Constitution of 1846 stops there. It seemed to the committee that it was a *casus omissus*—that the first part of the section contemplated action by the next Legislature upon that suspension within the first thirty days of the session, but, at the same time, omitted to give them any specific power to act upon it. In order to carry out the idea and effect the object they had in mind, it was necessary to make this additional provision, that the Legislature shall inquire into the cause of such suspension within thirty days after it convenes, and after notice to the Treasurer, and giving him an opportunity to be heard, to act upon it. And I think now it is better to give them that specific power, than to leave it to some general provision in another place. A case may occur when it will be necessary to have a provision of that kind. The Constitution gives the Governor no power to suspend for a longer time than the end of the first thirty days of the next session, and if action should not be taken within the thirty days, the Treasurer would be restored, notwithstanding the suspension for cause, for want of that action.

Mr. GREELEY—I call the previous question on the article.

The question was put on ordering the previous question, and it was declared to be ordered.

The question was then put on the amendment of Mr. Rumsey, and it was declared to be adopted, on a division, by a vote of 57 to 35.

The question was then put on the adoption of the article as amended, and it was declared to be adopted, and sent to the Committee on Revision.

Mr. CONGER moved to reconsider the vote by which the office of State Engineer and Surveyor was abolished.

Objection being made, the motion was laid on the table.

The CHAIR announced the next general order to be the report of the Committee on the Powers and Duties of the Legislature.

Mr. ROBERTSON—I rise to a point of order. I believe the report of the Committee upon the Management of the Canals is still on the list and has precedence among the general orders.

The PRESIDENT—The Chair does not so understand. There is no provision of that kind.

Mr. ROBERTSON—The same committee to which was referred the report of the Committee on Finance had also referred to them so much of the report of the Committee on Canals as referred to the finances of canals, and the rest was left undisposed of, in possession of the Convention, as a part of its business.

Mr. ALVORD—I do not know what, may be the record, sir, but I made no such distinct motion. I said when I made the motion, that I had no objection to that provision being made; but my recollection is that the whole report of the Committee on Canals was carried.

The PRESIDENT—The gentleman from Onondaga [Mr. Alvord], is right. They were made the special order for Tuesday next.

Mr. GERRY—I move to postpone the consideration of the report of the Committee on the Powers

and Duties of the Legislature until the minority report shall have been printed and laid on our table, and that the two be considered together.

The question was announced on the motion of Mr. Gerry.

Mr. GERRY—I call for the ayes and noes.

Mr. RUMSEY—I have no objection to this course being pursued with regard to this proposition. But allow me to call the attention of the gentleman who makes the motion to postpone this report, to the fact that with regard to almost all the provisions of this report, there is no dissension on the part of any of the members of the committee, and that gentlemen will accomplish their purpose fully, if we suspend action on that portion of it which they object to, and it will enable us to go on with the report when we have no other business to occupy our time.

Mr. GERRY—In answer to the gentleman from Steuben [Mr. Rumsey], I call his attention to the fact that the gentleman from Wyoming [Mr. Merrill] this morning inflicted a "gag" rule on the Convention, by a resolution that no person shall occupy more than ten minutes in arguing the case in Committee of the Whole; there will be no difficulty because in Committee of the Whole we can go through with this report.

Mr. MERRILL—I wish to call the attention of the gentleman to the fact that the resolution was laid on the table.

Mr. McDONALD—On account of the difficulty in considering the report of the Committee on the Powers and Duties of the Legislature, I shall move that all questions relating to the government of cities be postponed until the report of the Committee on Cities. As I understand it, the report of the minority relates entirely to that question, and I think it would be well, before we discuss it, to have the reports of all the committees relating thereto. I therefore move, as an amendment, that in the consideration of this report, all questions relating to the government of cities be postponed until the report of the Committee on Cities.

The PRESIDENT—The Chair does not think it germane to the proposition of the gentleman from New York [Mr. Gerry].

Mr. MERRILL—Before the vote is taken I would call attention to the fact that if this amendment shall prevail, the Convention will be left with nothing to do until the minority report is presented.

Mr. GERRY—I am informed that there will be reports presented to-morrow from two standing committees.

The SECRETARY proceeded to call the roll on the motion of Mr. Gerry.

Mr. Alvord's name was called—

Mr. ALVORD—I ask to be excused from voting. I am of the opinion that the gentleman from Steuben [Mr. Rumsey] is right, but in order to pass over this matter without any sort of difficulty, inasmuch as like courtesy has been extended to me in like circumstances, I would like to be excused from voting.

The question was put on excusing Mr. Alvord from voting, and it was declared carried.

The SECRETARY concluded the calling the roll on the motion of Mr. Gerry, and it was declared lost, by the following vote:

Ayes—Messrs. Baker, Barnard, Barto, E. Brooks, J. Brooks, E. A. Brown, Cassidy, Chertree, Chesebro, Conger, Daly, Garvin, Gerry, Gross, Hardenburgh, Hitchman, Kernan, Ketcham, Livingston, Lowrey, Magee, Mattice, More, Morris, Murphy, Paige, Pierrepont, Potter, Robertson, Roy, Schell, Schoonmaker, Stratton, Strong, S. Townsend, Van Cott, Verplanck, Weed, Young—39.

Noes—Messrs. A. F. Allen, C. L. Allen, Archer, Ballard, Barker, Beadle, Beckwith, Bell, Bickford, Bowen, E. P. Brooks, Clarke, Clinton, Cooke, Corbett, Curtis, C. C. Dwight, Endress, Farnum, Ferry, Field, Folger, Fowler, Francis, Fuller, Goodrich, Gould, Grant, Graves, Greeley, Hadley, Hale, Hammond, Hand, Harris, Hiscok, Hitchcock, Houston, Hutchins, Landon, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merrill, Merwin, Miller, Opdyke, A. J. Parker, President, Rathbun, Reynolds, Root, Rumsey, Seaver, Sheldon, Sherman, Spencer, Van Campen, Wakeman, Wales, Wickham, Williams—64.

Mr. McDONALD—I now renew the motion that so much of the report as relates to the government of cities be postponed until after we have received the report of the Committee on Cities.

Mr. RATHBUN—Is there a word in the report in regard to cities?

The PRESIDENT—There is nothing in the report in regard to cities.

Mr. RATHBUN—I do not remember a word of the kind. If anything should occur, members from particular localities will be sure to name it, and mention the fact.

Mr. McDONALD—All I have to say in regard to that is this: I have not examined the report of the committee; but I find that a minority of that committee have made a long report, which relates entirely to the government of cities. I take it for granted that they claim, at least, that that report has to do with the government of cities, and on that basis I make the motion. If the gentleman on the other side is right, there is no exclusion; if the minority is right, there is. I think there ought to be an exclusion, if there is any reason for it, and that, before we commence to consider the important question of the government of the cities of our State, we should have the report of all the committees thereon, especially the report of the Committee on Cities, which has been selected by this Convention to report upon that subject.

Mr. GERRY—There is no specific clause in the report of the Committee on the Powers and Duties of the Legislature, in regard to cities. But there are some matters connected with the powers and duties of the Legislature, which must necessarily affect the government of cities. A large portion of the minority report is directed particularly to this subject, and I hope the proposition of the gentleman from Ontario [Mr. McDonald] will not prevail; because it is indefinite in its character; and now that the Convention have decided to consider the subject, we shall reserve our considerations until it gets into Committee of the Whole; and when we shall have the report of the minority before us, and when a section comes up which is in conflict as

we understand, we can then move to postpone this particular section.

Mr. ROBERTSON—The minority report contains three different subjects. One refers to charitable interests, in regard to which we express our doubts as to the general form in which that proposition is worded—excluding all charitable institutions upon the ground that all the reform in that respect that was desired by petitioners, and every resolution offered, referred to donations to sectarian institutions. We express our doubts in regard to that—whether the section as drawn would be acceptable to the Convention; and we do not add our recommendation to that of the majority in regard to that question, reserving to ourselves the right to express our opinion when the question comes before the Convention. So, too, with regard to biennial sessions of the Legislature. We have not received any such expression of public opinion as would warrant us to recommend the change proposed in the report of the committee, and we did not wish to add our final and definite advice to that of the majority in regard to sessions of the Legislature intermitting for alternate years. In regard to cities, our objection was not to what is in that report, but to what is not in it; and after elaborate examination of the question as formerly presented to the court of appeals, in regard to commissions for the government of different districts, we asked to have inserted a provision debaring the Legislature from adding together parts of different divisions of the State, constituting districts for other purposes, for the purpose of giving local jurisdiction and creating local officers, thus taking it out of the operation of the general provisions contained in the Constitution of the State in regard to cities, towns and villages. That is the reason gentlemen do not find in this report anything in regard to cities, except what relates to railroad tracks through cities, in the last section—debaring the Legislature from the right to grant to individuals the right to build railroad tracks in the streets of a city. That is a matter of course, that will come up and may be postponed until after the report of the Committee on Cities, which is likely to be brought up in a short time. We are also opposed to the provisions for a court of claims. In regard to those matters, I would ask to have an opportunity given to my colleague [Mr. Burrill] to express his views; and if gentlemen are extremely anxious to go on with the report afterward, I have no objection.

Mr. E. BROOKS—I intended to say substantially what the gentleman from New York [Mr. Robertson], has just said, that a very important part of the minority report presented yesterday by the Committee on the Powers and Duties of the Legislature, had reference to the charities of this State. They had considered this subject, and the motion of the gentleman from Ontario [Mr. McDonald], was entirely irrelevant.

Mr. McDONALD—If the gentleman wishes it, I will withdraw it.

Mr. BROOKS—I hope the gentleman will withdraw his motion. I understood the Chair

to say his motion was out of order when it was introduced.

The PRESIDENT—It was.

Mr. E. BROOKS—I leave it to the good sense of the Convention.

Mr. RUMSEY—I suggest that the committee, under a formal motion, have an abundant right to pass over any question they see fit.

Mr. McDONALD—If the representatives of the minority do not wish the motion to be pressed I will withdraw it.

The Convention then resolved itself into Committee of the Whole on the report of the Committee on the Powers and Duties of the Legislature, Mr. BARKER, of Chautauque, in the chair.

The SECRETARY read the first section, as follows:

Sec. —. The sessions of the Legislature shall be held biennially only, at the Capitol of the State, or at such other place as shall be by law directed, commencing on the first Tuesday in January, 1868, and on the same day on every second year thereafter. The Governor may call special sessions of the Legislature by proclamation, in which shall be stated the particular object or objects for which they are so called, and no business shall be transacted at any such special session except such as shall be stated in the proclamation calling the same. The Legislature shall not adjourn for more than two weeks at any one time.

Mr. BELL—I move to strike out from the first line of the section, the word "biennial;" from the second line the word "only;" and also from the second line the words, "or at such other place as shall be by law provided." I think that the interest of this great State requires that the Legislature should meet annually. It is not like many of the smaller States, whose interests are of less magnitude, and can be postponed from year to year. No change in our present custom in this particular, is required or desirable. I think, sir, it is also well to settle in the Constitution now, that the Legislature shall meet at the Capitol, and it seems well to settle the question that the Capitol shall be located at Albany; if that is to be the action of the committee, it will require that the clause "at such other place as shall be by law directed," shall be stricken out. I therefore make the motion to strike out that provision.

Mr. RATHBUN—It will be remembered, by most of the members of the Convention, that a section covering this point has already been passed by the Convention—refusing to accept the recommendation of the committee to have biennial sessions only of the Legislature. That is now, as I understand it, complete on the part of the Convention for the present, and it would be unnecessary to alter that portion of the report. I hope, however, that the Convention will consider the question of biennial sessions, and that before we adjourn and leave this place they will be satisfied that it is better to make that alteration. A great deal has been said in regard to the will and the feelings of the people; and some gentlemen mentioned that they had recently been at home and learned that certain things were talked of by the people. I can

say the same thing, and in regard to that section, it met with hearty approbation from the people; it was universal so far as I understand it, and was more talked of and approved than anything that has been done in this Convention. I apprehend that the gentlemen of other localities will find that it will be not only right and proper, but in accordance with the will of the people to make that change. All that part of it, sir, I understand to be entirely covered by what we have done in Convention on the subject of biennial sessions, which has been voted down. I doubt whether we have a provision in regard to the difficulty of special sessions, which is as well prepared and as perfect in its character as what is here presented. I do not remember that we have it at all; and, if not, sir, I should desire that the Convention might adopt that as a part of the section adopted sometime ago upon the subject of the powers and duties of the Legislature. That certainly should be a part of this section.

Mr. COOKE — I move to amend the amendment by striking out all down to and including the word "thereafter," in line four. I do not understand that it is competent for this committee, to adopt the provision proposed by my amendment to be stricken out. The Convention have solemnly adopted this provision: "The legislative term shall begin on the 1st day of January; and the Legislature shall every year assemble on the first Tuesday of January, unless a different day be appointed by law." It is already adopted in the article reported by the Committee on the Organization of the Legislature. I therefore move to strike out all that portion, leaving the remainder to stand as it is reported by the committee.

Mr. BELL — I will accept the amendment.

Mr. WEED — I move to strike out the whole section. I do it for the reason that we have already fully discussed this question, adopting what we supposed to be the proper article, and referring it to the Committee on Revision. I make the motion also from the fact that, with all due respect to the committee making this report, it was no part of the subject-matter of the Constitution which was referred to it. There was a special committee upon the organization of the Legislature; that committee has reported, as I have said, and has been said by the gentleman from Albany [Mr. A. J. Parker] and their report has been amended and adopted. This committee was charged with the powers and duties of the Legislature. The first section is entirely, as it seems to me, with reference to the organization and calling of the Legislature together. For that reason I move to strike out the section.

Mr. ALVORD — I am decidedly in favor of striking out the latter part of this section. I do not believe, so far as the latter part is concerned, in having the Legislature compelled to sit in permanence here; but so far as regards this provision providing that the Governor may call a special session of the Legislature, it seems to me that it is eminently proper. My recollection of the past history of this State has been that there have been very many times when it would

have been a great public benefit to have had acts done which were necessary to do upon the part of the executive officers of the government in a lawful manner, that they could have had legal sanction. Very often during the late rebellion there were many acts performed on the part of the counties and towns and villages which were in direct violation of law; and it became necessary, in the then condition of the country that these acts should be done, and that they should wait for legalization until after the Legislature should regularly meet, before they could be legalized. The difficulty in connection with calling the Legislature together, by the Governor, was that he had no power of restriction, that when the Legislature should be called together to act upon a specific matter, and when the entire people were willing that it should be done, there was fear upon the part of the Executive and the people, that that power would be used as a means of going into general legislation, and thereby doing great damage and injury to the people of the State. Therefore, while we should give the power, I do not think that it is proper that he should call the Legislature together specially unless he should also have the power to specifically confine them to such legislation as he called them together for; and after they had performed that specific duty their functions under that special call should cease.

Mr. ALLEN — If the gentleman will turn to the fourth section of the article on the Governor, etc., in the report of that committee he will find that the Governor has power to call the Legislature together on extraordinary occasions expressed in that article.

Mr. ALVORD — The only difficulty in regard to that matter, is that it does not contain the restriction. He has a right to convene them on extraordinary occasions; but it does not contain the restriction. It is the restriction I want—the power to call them together for a specific purpose and no power on the part of the Legislature to go beyond it. It strikes me that this ought to be adopted. It may be well enough, though not in the place it occupies. It wants a transposition in order to render the instrument harmonious that we adopt here; but the idea should certainly be engrafted in the Constitution.

Mr. BELL — I am decidedly in favor of the restriction in the latter part of this section. Great inconvenience has been experienced heretofore, on this subject, particularly during the war, in this regard, for the reason that the present Constitution contained no provision by which the Governor could confine the action of the extra session to the subjects which might be specified in the call. The Executive of this State has been obliged on his own account, and in his own name to incur vast responsibilities in furnishing money to raise and equip troops to enable the State to furnish its proper quota for the army, because he was fearful that if he called the Legislature together for a specific purpose that they would enter upon general legislation, involving the State in a very large amount of expenditure, and transact business that might

be deferred to the regular session of the Legislature. If we can select from this section so much as may apply to that particular subject, and then leave it to the Committee on Revision to put it into proper shape, we shall do all that will be necessary in adopting this section. I think, therefore, that this part of the section which restricts the Legislature from entering upon any other legislation except that for which it was specifically called to consider, should be adopted, and engrafted upon previous sections that we have heretofore passed and that are not contained in those sections.

Mr. RUMSEY—Before that question is put I desire to say a word with regard to the provisions for biennial sessions of the Legislature; and that restriction upon the action of the Legislature which forbids it to do any act except those for which it may have been called together by the Governor, as these are the only important provisions contained in this section. It is perfectly evident to every one that more than two-thirds of the legislation of this State for the last five years has been confined to questions of local and private legislation, and that in the absence of that class of legislation there is no sort of necessity for having a meeting of the Legislature oftener than once in two years. If they are only to legislate in regard to general subjects, if they are to legislate only upon questions of general concernment, the experience of the courts and of counsel engaged therein during the two years of recess will have pointed out all the requisite general amendments to the laws that are necessary with greater distinctness than a shorter term. I understand that it is one of the cardinal objects which this Convention has in view to stop this flood of private and local legislation, and that they intend, before they shall adjourn, to adopt some measure which shall produce that result. There are in this report which has been submitted here several provisions which are intended to effect that purpose, and we think they will do it. Amongst them is this—

The hour of two o'clock having arrived, the PRESIDENT resumed the chair in Convention.

The PRESIDENT announced the appointment of Mr. Reynolds as a member of the Committee on Future Amendments to the Constitution, in place of Mr. J. Brooks, who voluntarily retired.

The Convention then took a recess until half-past seven o'clock P. M.

EVENING SESSION.

The Convention re-assembled at half-past seven o'clock, when proceedings were resumed.

Mr. ARCHER—I ask leave of absence for the balance of the week, on account of ill health.

There being no objection, leave was granted.

Mr. MERRILL—I ask indefinite leave of absence for Mr. Frank, of Wyoming, and for myself until Saturday evening.

There being no objection, leave was granted.

Mr. SILVESTER—I ask leave of absence for Mr. Sheldon, of Dutchess, for next week.

There being no objection, leave was granted.

Mr. CLINTON—I ask leave of absence for Mr.

Potter from to-morrow evening's session and until Tuesday morning.

There being no objection, leave was granted.

Mr. SCHELL—I ask leave of absence for Mr. Duganne until Tuesday next. He has been suddenly called away.

There being no objection, leave was granted.

Mr. HADLEY—I ask leave of absence for myself for the sittings of to-morrow and Saturday.

There being no objection, leave was granted.

Mr. WILLIAMS—I ask leave of absence until Monday evening for Mr. Prosser, of Erie.

There being no objection, leave was granted.

Mr. RUMSEY—I ask leave of absence for Mr. Lapham, who has been called home on important business, until Tuesday morning.

There being no objection, leave was granted.

Mr. AXTELL—I ask leave of absence for Mr. Landon until Wednesday morning.

There being no objection, leave was granted.

Mr. FOLGER—I ask leave of absence from to-morrow at noon until Tuesday morning.

There being no objection, leave was granted.

Mr. M. H. LAWRENCE—I ask leave of absence for Saturday and Monday.

There being no objection, leave was granted.

Mr. GREELEY—If we do not stop somewhere in granting leaves of absence we shall have no quorum. I object to any more leaves of absence after this one.

The Convention again resolved into Committee of the Whole, on the report of the Committee on the Legislature, its Powers and Duties, &c., Mr. COOKE, of Ulster, in the chair.

The CHAIRMAN announced the pending question to be on the motion of Mr. Bell, to strike out the first, second, third and fourth lines of the first section down to and including the word "thereafter;" and the amendment of Mr. Weed, to the amendment to strike out the entire section.

Mr. VAN CAMPEN—I now move that the Committee rise and report this article to the Convention, and ask to be discharged from its further consideration.

Mr. RUMSEY—I believe I have the floor.

The CHAIRMAN—The Chair did not recognize the gentleman from Steuben [Mr. Rumsey], but recognized the gentleman from Cattaraugus [Mr. Van Campen].

Mr. ALVORD—I believe that a motion to rise and report progress is not debatable. But this is a separate and distinct motion. It has reference to reporting the article to the Convention; and I desire to be heard a few moments on that point, if the Chairman is of the same opinion with myself.

Mr. SHERMAN—I rise to a point of order, that the motion is not in order when amendments are pending.

The CHAIRMAN—The Chair is of opinion that the point of order is well taken.

Mr. RUMSEY—I was remarking when the committee rose, that the object of this Convention was to adopt such a system as should tend to reduce the volume of legislation in the State. We have already done that to some considerable extent in the provision we have adopted with

regard to chartering corporations under general laws and the amendments to such charters—that I understand will prevent all applications to the Legislature for amendment to those charters for the purpose of increasing or modifying their powers. The provision contained in this report is that all private and local legislation shall be had under general laws, and if that shall be adopted it will render unnecessary another large portion of the legislation of the State. In addition to those sections, this report provides for embracing within the scope of general laws, another very large portion of legislation which may just as well be done under such law as not. Now, if we should succeed in removing from the action of the Legislature all these things, there will be nothing left except the appropriations for the support of government and the ordinary laws for the protection of private rights and redressing public and private wrongs, which, in my judgment may better be deferred two years than be acted upon year by year. These are the reasons which have induced the committee to report this provision for biennial sessions of the Legislature; and, sir, we are not the pioneers in this proposition; there are eleven of the States in this Union that now have only biennial sessions of the Legislature, and they are some of them States almost as extensive in their business operations and their interests as is the State of New York; those States are Indiana, Mississippi, Nebraska, Ohio, Delaware, Kentucky, Michigan, Missouri, Arkansas, North Carolina and Oregon. In all of these States they have only biennial sessions of the Legislature, and I need not advert to the fact that the State of Ohio has, for all practical purposes, as much need of annual sessions of the Legislature as we have, yet it has been without them for a great many years. It has extensive canals, large numbers of railroads and large cities within the bounds of the State, and there is no reason why the State of New York should have annual sessions of the Legislature that do not apply with equal force to these other States. Michigan has but just completed the revision of her Constitution, and having heretofore had the experience of biennial sessions of the Legislature, she has retained that provision in her new Constitution, and I gather from that, that it worked well in that State; and yet she has important interests to care for; interests almost as important as any in the State of New York. I have nothing further to say on the subject of biennial legislation except simply this, that these various considerations have induced the committee to report in favor of biennial sessions, and it is with the Convention to say whether they will adopt the report or not. But there is one provision in this section which should be retained whether that as to biennial sessions shall be retained or not. It is the provision which restricts the action of the Legislature at special sessions to the matters stated in the proclamation calling them together and for the purpose for which they are called.

Mr. BELL—It seems to me that this amendment is not well understood. It will be remembered by the members of this committee that we

have heretofore passed a provision for the assembling of the Legislature on the first Tuesday in January of 1868 and annually thereafter. That having been passed by the Convention and being now with the Committee on Revision it is not necessary to re-enact it here, and the only point now under discussion is whether the Legislature shall meet annually or biennially as provided for in this article. I will not state the reasons why they should meet annually, as I have repeated them at the session this morning. I only rise to state to the committee the condition of the pending question.

Mr. E. A. BROWN—When this subject of biennial sessions of the Legislature was under discussion in the committee, I was disposed to favor its being reported to the Convention with the view to a more thorough discussion, and if the Convention were favorably disposed to its adoption to adopt it. But, sir, the action of the Convention some days ago, it seems to me, has disposed of the question, and although there are many strong reasons in favor of the proposition, I am, for myself, satisfied with the disposition of it made by the Convention on a former occasion. It is urged by my honorable friend from Steuben [Mr. Rumsey], who has given the subject more consideration than I have, that the previous action of this Convention has disposed of many subjects of legislation, so that there will not be that necessity hereafter, that there has been heretofore, for annual sessions of the Legislature. I desire to say in answer to that, that the State of New York is a great State, having great interests, a growing population, and an increasing business, and as time progresses and as other resources of the State are more and more developed, as other enterprises are undertaken, other interests developed, there will be new subjects of Legislation, it seems to me, to take the place of those which, to some extent, have been disposed of, and thus create a necessity for annual meetings of the Legislature. I am, therefore, disposed to vote for the amendment of the gentleman from Jefferson [Mr. Bell], to strike out the first four lines of the section, retaining that part which relates to special sessions of the Legislature but restricting their authority at special sessions, to the subjects mentioned in the proclamation of the Governor which called them together.

The question was put on the amendment of Mr. Bell, and it was declared adopted.

The question was then announced on the motion of Mr. Weed, to strike out the balance of the section.

Mr. FERRY—I would like to have some gentleman state if there is any reason why the Legislature shall be so restricted in their action, after they are so curtailed in their powers and are paid by a stated salary. I would like to hear some reason stated why, when called together for a special object, they should be precluded from examining into any other matters provided they should deem it important to do so; I cannot see what harm would arise from not restricting their authority in this respect, and I rise therefore to ask some gentleman who has reasons for such restriction, to give them. Then I do not under-

stand why the Legislature should be restricted in regard to adjournments, if paid by a salary. If it might materially add to the expense there might be some reasons for not permitting an adjournment for more than two weeks. But as it is, I cannot see that any harm can arise from their having the power to do so.

Mr. RUMSEY—That clause was inserted, that the Legislature should not adjourn for more than two weeks, as appropriate, providing the section as to biennial sessions should pass, so that they should not get around the provision by a long adjournment. The reason why they should not do any other work at special sessions than that for which the session was called by the Governor, was simply this, and it will operate with more force now that we have concluded to have annual sessions. If they are called together they will be called together at an unusual time—at a time when the people at large do not expect any legislation, and are not prepared for it, and will not give it that attention which they would do if they met at regular sessions. Therefore, it should be confined to the particular business to which they are called.

Mr. E. A. BROWN—I move to amend by striking out "The Legislature shall not adjourn for more than two weeks at any one time."

The question was put on the motion of Mr. E. A. Brown, and it was declared carried.

The question then recurred on the amendment of Mr. Weed, and it was declared lost.

There being no further amendments to the first section, the SECRETARY proceeded to read the second section, as follows:

SEC. 2. No member of the Legislature shall receive any civil appointment within this State from the Governor, the Governor and Senate, or from the Legislature during the time for which he shall have been elected, and all such appointments and all votes given for any such member, for any office or appointment shall be void.

Mr. CHESEBRO—I move to strike out that section, as being already within the sixth section of document 79, already adopted by the Convention, in the report of the Committee of the Whole on the report of the Committee on the Legislature, its Organization, etc. The sixth section of that report applies to this and some of the following sections.

Mr. BELL—I call for the reading of the sixth section.

Mr. CHESEBRO—The sixth section reads:

SEC. 6. No member of the Legislature shall be appointed to any civil office within this State by the Governor, the Governor and Senate, or by the Legislature during the time for which he shall have been elected, and all such appointments and all votes given for any such member therefor shall be void. Nor shall any person being a member of Congress, or holding any judicial or military office under the United States, hold a seat in the Legislature. If any person shall, after his election as a member of the Legislature, be elected to Congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

I think, sir, that the second third, fourth

and fifth sections of this report are comprised within two sections of the report which has been adopted by the Convention.

Mr. RUMSEY—It is right to strike out the three sections right along. They have been adopted just as they are here.

Mr. CHESEBRO—I will change it, and move to strike out the three sections.

SEVERAL DELEGATES—Four.

Mr. CHESEBRO—Yes, the four.

Mr. RUMSEY—Which four sections does the gentleman from Ontario [Mr. Chesebro] mean? Mr. CHESEBRO—They are the four following the one now adopted.

Mr. RUMSEY—Yes, you are right.

The question was put, on the motion of Mr. Chesebro, and it was declared carried.

The SECRETARY preceeded to read the next section, as follows:

SEC. 2. For any speech or debate, in either house of the Legislature, the members shall not be questioned in any other place.

There being no amendments to the section, the SECRETARY proceeded to read the next section as follows:

SEC. 3. Any bill may originate in either house of the Legislature, and all bills passed by one house may be amended by the other.

There being no amendments to the section, the SECRETARY proceeded to read the next section as follows:

SEC. 3. The enacting clause of all bills shall be "The People of the State of New York, represented in Senate and Assembly, do enact as follows," and no law shall be enacted or money or property be appropriated except by bill.

Mr. RUMSEY—The last word should be "law," so that it shall read, "except by law," instead of "except by bill."

The CHAIRMAN—The Secretary will make the correction.

Mr. SPENCER—The amendment suggested will involve tautology. It will read, "no law shall be enacted, etc., except by law."

Mr. RUMSEY—The language used in the section reported, is precisely that of the old Constitution, with the exception of inserting the words "or money or property be appropriated." That has been added by the committee.

Mr. SHERMAN—I move to amend so that it shall read "and no money or property shall be appropriated except by law." That will be an improvement.

Mr. SCHOONMAKER—The word "bill" in the provision in the old Constitution, is in contradistinction to a joint resolution, so that no law should be passed except by bill. That is to say that it should not be passed by a joint resolution. I think the word "bill" is right.

Mr. BELL—The word "bill" is right. It seems to me that the gentleman from Oneida [Mr. Sherman] has not looked at this with his usual care; he has not provided that no law shall be enacted or money or property appropriated except by bill; I think he has omitted that clause. I am of the opinion that it is correct as printed in this section, and if it shall remain, that no law shall be enacted, or money or property be appro-

passed except by bill, then a bill will have to be introduced, and be put on its first, second and third readings before it becomes a law. All laws so passed are made by the introduction of bills, and I call the attention of the gentleman from Oneida to that view of the question.

The CHAIRMAN—The Chair understands the gentleman from Steuben [Mr. Rumsey] to restore the section to the form as printed.

Mr. SHERMAN—I withdraw my amendment.

Mr. FOLGER—For the purpose of securing an explanation by the gentleman from Steuben [Mr. Rumsey] for the insertion of the words "money or property be appropriated," I move to strike them out.

Mr. RUMSEY—There is no necessity for it except that they sometimes have appropriated money and property under the Constitution of 1846 by joint resolution.

Mr. FOLGER—Is there not some other provision of the Constitution which requires all appropriations to be made by law; because if this phrase be used, it might carry by implication that a right might be released or a claim given up.

Mr. RUMSEY—It would cover the appropriation of money but not of property.

Mr. CLINTON—This is an evil intended to be guarded against; it was perceived by the Convention of 1846, and they supposed they had practically provided against it, when by section 14 of article 3, they provided that "no law shall be enacted except by bill." I think it substantially covers the whole ground.

The question was put on the amendment of Mr. Folger, and it was declared carried.

The SECRETARY proceeded to read the fifth section as follows:

SEC. 5. No bill shall be passed, unless by the assent of a majority of all the members elected to each branch of the Legislature; and the question upon the final passage shall be taken immediately upon its reading, and the yeas and nays entered in the Journal.

Mr. MERWIN—The old Constitution uses the word "last" before the word "reading." I think it is a misprint, or it would be so in this report. I therefore move to insert the word "last" before the word "reading," so as to conform to the language of the old Constitution.

The question was put on the amendment of Mr. Merwin, and it was declared carried.

Mr. ALVORD—I do not know but what I may be too critical. It seems to me to be entirely proper to follow as nearly as possible the language of the old Constitution. The old Constitution says that the yeas and nays shall be entered "on" the Journal—not "in" the Journal as here provided. I suggest, therefore, that the word "on" be substituted for the word "in," in the fifth line.

The question was put on the amendment of Mr. Alvord, and it was declared carried.

There being no amendments, the SECRETARY proceeded to read the next section, as follows:

SEC. 6. No law shall embrace more than one subject and the matters necessarily connected therewith, which subject shall be expressed in its title.

There being no amendments, the SECRETARY proceeded to read the seventh section, as follows:

SEC. 7. No bill shall be introduced into either house of the Legislature during the last five days of the session.

Mr. ALVORD—I move to strike out "five" and insert "twenty."

Mr. BICKFORD—I move to strike out the whole section.

Mr. CONGER—I hope that amendment will prevail, for, although it is bad policy to allow a bill wholly new to originate and to be presented so late in the session, yet it frequently happens, as I remember in my own experience it did, that on the failure of a bill having certain objects in view, it was necessary to present a bill embracing some of the main objects in the bill that had been lost, leaving out its objectionable features, and it was necessary to present that bill at a very late day in the session. Such bills frequently pass by unanimous consent when a majority could not be accorded to a bill as originally introduced.

Mr. GREELEY—I hope this motion to strike out will not prevail; and yet I feel the force of the objection to the section. We can all remember how just as the Legislature of 1861 was prepared to adjourn, the civil war broke out, and it became absolutely necessary to act here in the Legislature—that, just in the closing days of the session, it was necessary to arm the State and to arouse the people, just two days before the adjournment. I propose to retain the section, and add at the end these words: "except on recommendation of the Governor," so that it will read, "No bill shall be introduced into either house of the Legislature during the last five days of the session, except on the recommendation of the Governor." If he sees a necessity for the introduction of some measure—perhaps a great emergency—let him by message recommend action on the subject, and then, if it be proper, the Legislature will take it up. Otherwise, this provision is a wholesome one, and ought to be retained.

Mr. SPENCER—I suggest a difficulty to this section as it will stand with the amendment proposed by the gentleman from Westchester [Mr. Greeley], and that is that it cannot be determined beforehand what time will be included in the last five days of the session. For it will not necessarily happen that the Legislature will determine five days beforehand that they will adjourn at any particular time.

Mr. BICKFORD—An act of great importance may pass before the close of the session which contains some objectionable features. The Governor may send in his veto to and the Legislature may see the force and the impropriety of passing it over his veto, and thus important legislation might fail unless a new bill was introduced with the objectionable features stricken out. It seems to me that it would not be right to restrict the Legislature. It may be the occasion of the failure of very important measures.

Mr. GREELEY—I suggest that my amendment will cover that ground. If the Governor should feel called upon to veto a bill on account of objectionable sentences contained therein, and there should be a necessity of passing some bill on the subject, the Governor would, of course, feel required

to recommend such action, either by veto message or otherwise. I think that my amendment will answer the purpose.

Mr. ROBERTSON—I would suggest to my friend from Jefferson [Mr. Bickford], that the language of this section appears to be misunderstood by him. It is not that no bills shall be passed by either house of the Legislature during the last five days of the session, but that no bill shall be introduced in either house of the Legislature during that time. A bill that has been before the Governor and returned is not introduced for the first time during the last five days of the session. This provision is taken from the Constitution of one of our sister States, and they thought by experience that it would be better to leave the Governor the last five days of the session to look over bills passed, instead of hurrying them through up to the last minute of that time.

Mr. ALVORD—Will the gentleman from New York [Mr. Robertson] inform me when are the last five days of the session? I have great difficulty in arriving at the conclusion when those five days begin.

Mr. RUMSEY—I do not know that I ever knew of a Legislature which did not know much more than five days before the end of the session when they would adjourn. It is always usual to pass a resolution fixing the day of adjournment, and if this provision is put in the Constitution, they will beyond all question do it.

Mr. MURPHY—I might answer the gentleman from Steuben [Mr. Rumsey] by saying that I have been a member of the Legislature for several years, and I have never known when the Legislature would adjourn, within three days of the adjournment. It appears to me there is no necessity for this provision. We should look at the whole contents of the article. The last section but one, provides that no local or private bill shall be introduced into the Legislature except during the first sixty days of the session, so that the only bills which can be introduced after the session of sixty days, and within the five days contemplated by this section, are public bills. I submit it would be very unwise on the part of this Convention to so limit and restrict the power of the Legislature as to say that no bill of public interest shall be introduced within the last five days of the session, and I hope the Convention will see the propriety of striking out the section now under consideration.

Mr. RATHBUN—The object, Mr. Chairman, of the introduction of that section was that there should be time prior to the adjournment when business should cease to be made up for the purpose of being passed at the session. Other provisions which have been reported upon and adopted by the Convention contemplate the completion of all legislative proceedings upon the adjournment of the Legislature; bills are to be signed and the whole business closed at the hour of adjournment. Now, it was supposed by the committee that a precaution, and one tending to enable the Legislature to wind up its business in an orderly manner, would be that some time should be fixed prior to the adjournment, within which no new business should be presented to the

Legislature. It was in that view that the clause was reported, to prevent that press and accumulation of business to be hurried through without proper consideration or without due deliberation, and then thrown into the lap of the Governor to be signed by him in utter confusion when it must either fail for want of time or perhaps it ought to fail for the want of that care and discretion which ought to be exercised in matters of legislation. Now, sir, it is a part of the general plan which the committee proposed with a view to the finishing up in an orderly manner of the whole business of the session, so that when the body should adjourn they would know what they had done, and when they left to go home they would know what laws they had passed—what had been signed by the Governor, and what had met his condemnation. Now if the Committee of the Whole supposed this to be unnecessary of course their judgment would be better than that of the committee consisting of only seven persons, who examined and adopted it. It is not original with the committee; but it is an adoption from the Constitution of another State, and supposed to have been duly considered and weighed by a former committee, and by a Convention of another State and forming part of the Constitution of another State. Now, sir, we in our judgment believed it was a part of the machinery which would tend to that order and regular mode of business which was desirable in a legislative body.

Mr. BELL—The object that the gentleman from Cayuga [Mr. Rathbun] has in view, is a very commendable one; to wit: that the Legislature should finish up their business and be prepared to adjourn on a certain fixed day. But it is very difficult to ascertain in any legislative body when that precise day will take place for any length of time previous. The gentleman tells us that he has endeavored to so arrange this article that the business of the Legislature may be done orderly and in proper time, and I would ask him if the provision on the fourteenth page of the report, which says "that no bill shall be introduced in the Legislature except during the first sixty days of its session," is not entirely sufficient for this purpose, and if this provision be adopted, will obviate the necessity of the section now under consideration.

Mr. RATHBUN—If the gentleman will be good enough to allow me to explain what I understand is the difference—

Mr. BELL—I apprehend by looking at the section more critically that it refers to local bills.

Mr. RATHBUN—We have labored under this difficulty, that city and village charters have been altered in important particulars without anybody being aware of it. We were anxious that that thing should be arrested, and it was to this end that the provision was framed in the next to the last section, that local or private bills should not be introduced unless twenty days notice was published of the intention to introduce them before the session of the Legislature, and also that no such bill should be introduced after sixty days of the session had expired.

Mr. BELL—The object is a very desirable one but I doubt if this will attain it. It is impossi-

ble to fix a time; but if it can be fixed, a longer time ought to be inserted; it should be ten days instead of five.

Mr. RATHBUN—I am content to have it ten days.

Mr. BELL—It is so impracticable I am doubtful whether it is best to fix any time, but if it is to be retained I would amend it by substituting the word "ten" instead of "five."

Mr. RATHBUN—I wish to call the attention of members to a fact which already appears upon their record, which they have made by the alterations and improvements in the Constitution with regard to the matters and things to be submitted to the Legislature, or, in other words, to the amount of labor and business withdrawn altogether from that body. Corporations are entirely disposed of—they require general laws. No special charter can be passed under this Constitution. A very large portion of business has been transferred to the boards of supervisors of counties, and power to authorize towns, cities, villages and counties to engage in the business of making bonds to enable corporations to build railroads is also withdrawn. Private bills—if the Convention adopt the recommendation which the committee have made, and which I am inclined very much to think they are disposed to do—and private claims and all that immense mass of legislation growing out of canals and out of all other matters connected with the business and other interests of the State will be entirely withdrawn from the Legislature. Now, there are many other topics which do not occur to my mind at this moment, so that in point of fact when this Convention closes its labors there will be little, if any, legislation, except that of a public character. It is changed entirely, and it will be changed for the better. It means that the Legislature shall do what they may well do, and what they ought to do, and that is to legislate for the great body of the people and not for these petty, private claims and private matters which have been a source of a great deal of trouble and which have given to the Legislature a bad name. I apprehend when we find all these things taken away and the Legislature assembled to provide for the public and to look to the public interest, to pass public general laws that the whole character of their business will be so changed that they can, long before the day of adjournment, fix the time and period at which they will adjourn with almost absolute certainty. So I think they will have no difficulty in saying five or ten days in advance that they will adjourn on such a day, and pass a resolution to that effect.

Mr. ALVORD—I have no objection, and I doubt whether there will be any objection to the passage of this section, provided that the gentleman will put in a constitutional provision that by joint resolution, at least five days before adjournment, the Legislature shall fix the day of adjournment.

Mr. RATHBUN—I hope the gentleman will move that as an amendment. I have no objection to it. I will willingly vote for that amendment.

Mr. CONGER—I would inquire of the gentleman from Onondaga [Mr. Alvord] if a resolution of the Legislature to adjourn on a certain day

passed five days before the adjournment, would prevent the Legislature from subsequently reconsidering that resolution, and adjourning at some future day?

Mr. ALVORD—Certainly not.

Mr. CONGER—That would not give any definiteness to the time of adjournment. The object of the committee evidently was to make a provision that no new bill containing new matter or suggesting new matter that had not been before heard in the house should be introduced into either house during the last five days of the session. But that language is so sweeping and general that there would be no opportunity, in case a bill had been lost (some part of which might have escaped the veto, or would have met a favorable reconsideration on the part of the Legislature), to have it re-introduced; such a bill would come under the ban of this phraseology, because it would be a bill introduced. I remember that in the extra session of 1853, after a long period of time had been exhausted upon the supply bill, it became necessary to introduce a new bill appropriating a very small amount of money as a matter of extra clerk hire for the benefit of the Comptroller's office. There was a new bill, not of old matter, but introduced as a new bill in form; and I certainly think there could be no objection whatever to any such action, and no impropriety upon grounds of public convenience or propriety. But if gentlemen wish to retain this provision, and they will consent to insert after the words "no bill" the words "touching new matter," or some other phrase that would indicate the nature of the bill that is not to be introduced within that limited time, and that it shall not present new matter, then I have no objection to the adoption of the section.

Mr. FULLER—it would be introducing a new feature into our system to allow the Governor to say whether a bill should be introduced into the Legislature or not. I think the executive and the legislative departments should be kept distinct as a matter of principle, and I am, therefore, opposed to that amendment. I think, sir, one great difficulty with this report of the Committee on the Powers and Duties of the Legislature is that there is a great deal too much of it, that they have gone too much into minutiae, and that it partakes too much of the character of legislation instead of the character of fundamental law. I am in favor of striking out this provision altogether; I think it would be very embarrassing if it is left in. In practice it nearly always happens that in the last days of the session of the Legislature some important matter has been omitted, and there is a necessity for the introduction of a new bill. If you retain this provision what will be the consequence? It will happen very frequently that the Legislature will have to prolong its session five days in order to allow a bill to be introduced. That will be the consequence of it in its practical operation. I was a member of the Legislature for several years, and I never knew it to fail that there was some important matters that had been omitted and that had to be introduced during the last days of the session, and the only consequence of retaining this provision will be to force the Legislature to prolong its session.

sion for five days and rescind its resolution for adjournment, if they had already adopted one.

Mr. FOLGER—It is undoubtedly an object, if it can be achieved, to prevent the introduction of bills during the last five days of its session. We have already adopted one provision which looks to that purpose. That provision prohibits the Governor from signing any bill after the adjournment of the Legislature. That was indicated, and I think in a great measure passed, upon the ground that it would tend to prevent the introduction of bills in the hurry of the very last days of the session. Is it practicable to arrive at any form of words which shall ascertain what shall be the last five days of the session? It seems to me that it is. I think if we compel the Legislature to remain in session until five days have elapsed after they have, by joint resolution, fixed the day of adjournment, we can then beforehand say what shall be the last five days of the session. Then we can say, undoubtedly, no bill shall be introduced during those five days, except such bill as shall be of general importance. I have drawn an amendment which I think will cover that. It is as follows: "The Legislature shall not adjourn *sine die* until the lapse of five days from the adoption of a joint resolution fixing the day for a final adjournment." Now, the gentleman from Monroe [Mr. Fuller] says there may, during that five days, come up some matter of general importance that every one will wish and necessity will demand that it shall be introduced and passed. Well, that is easy enough. If it is of such general importance the Legislature will perceive it, and all they have to do is to rescind their resolution and pass another, giving five days more session, and before the five days begins to run, this general bill may be introduced; and it will have this effect, that no such thing will be attempted unless it is of such pressing necessity and importance as to commend itself to the attention and favorable consideration of all the members of both houses of the Legislature; and if it is of such pressing importance and necessity they can afford to stay five days longer. Indeed, they ought to stay five days in order to properly consider and perfect an important measure. I go on with my proposed amendment, "No bill shall be introduced in either house of the Legislature during the last five days of the session, except by the affirmative vote of three-fourths of all the members elected to said house, and then it shall have preference over any bill in that house." Here it must be a bill which attracts the favorable consideration of three-fourths of the members to allow it to be introduced during those five days of the session, and it will not do that unless it is a bill of general importance, which gives it preference over every other bill, so that any gentleman of either house of the Legislature, who has a measure in which he is personally interested will not vote to introduce this new measure, inasmuch as it will have preference over his bill, unless it be a bill of general importance and pressing necessity. So that I think we secure by this amendment the three ends in view. First, that the last five days shall be calm and deliberative, free from the hurry of introducing new measures, and the rapid passing of them; second,

that we still reserve the privilege of introducing a bill of general importance and pressing necessity, by requiring or providing for the concurrence to that effect of three-fourths of the house; and, third, we provide against that concurrence being hastily given by saying it shall have preference over all other bills, and it must be something which attracts favorable consideration and approval at once, which should pass into law before three-fourths of the house would assent to it.

Mr. CONGER—I would like to inquire of the gentleman whether he means preference on the first or second reading, or on its final passage?

Mr. FOLGER—A preference at every stage.

Mr. SCHOONMAKER—As the object to be attained by this proposition, requiring bills to be introduced within five days of the adjournment, is to prevent hasty legislation, I think it may be attained by a provision requiring that no bill in either house shall have its second and last readings on the same day, then you will virtually require a bill to be introduced at least four days before the close of the session.

Mr. MURPHY—What is the object of this section? It provides, as has been truly said by the gentleman from Cayuga [Mr. Rathbun], against the introduction of local and private bills after the first sixty days of the session. It declares that the great mass of special legislation which has heretofore occupied the attention of the Legislature, shall be disposed of by general bills. It removes a great load of what has occupied the time of the Legislature heretofore from its consideration, and leaves, after the sixty days of the session, only to be introduced public bills, and then says that the public service, the public interest shall not be regarded as it may require to be done during the last five days of the session. Why not, sir? What is the harm of introducing bills during the last five days of the session? The Legislature will have got rid of special legislation in regard to corporations and private and local bills, and it can proceed during the last five days in the consideration of new measures, if the public interest require it. Why should we tie up the Legislature so tightly? Are we to distrust them entirely? Is it that the representatives of the people of this State will not know how to discharge their duty in this respect? It appears to me, sir, that we are doing injustice to the public interest, we are distrusting the people themselves, we are making the Legislature a mere machine by adopting the restrictions proposed here and elsewhere in this article. Now, with regard to the suggestion of the gentleman from Rockland [Mr. Conger]. He wishes to limit it so that no new matters may be introduced. Now, there is a provision in the section which follows this, which is diametrically opposite to his views. It is this: "After a bill has been finally rejected by either branch of the Legislature, no bill or joint resolution containing the same substance shall be passed into a law during the same session." That is an express provision against introducing any matter which may have been previously considered, which may have been previously voted upon, or otherwise considered in the Legislature of the State. Now,

I think, sir, we should strike out this section altogether. The amendment providing that three-fourths of the members shall consent, as proposed by the gentleman from Ontario [Mr. Folger] before a bill can be introduced, appears to me to be in violation of the great principle which lies in all our legislation, that the majority shall govern. Why must it be that three-fourths or any other large number should be required for this purpose? May we not safely trust the majority of the Legislature in this matter, as in every other law which they pass? I submit we ought to strike this section out altogether.

Mr. VERPLANCK—Is an amendment in order?

The CHAIRMAN—It is not.

Mr. SMITH—I hope that this section, or something similar to it will be adopted. It is admitted on all hands that we have suffered heretofore in our legislation by the practice of postponing important measures to near the close of the session, and then hurrying them through without due deliberation. I believe there are no two voices upon this matter. All agree that here is a great evil from which we have suffered. As has been already said by the gentleman from Ontario [Mr. Folger], we have adopted one measure to meet this difficulty, and that is to prevent the Governor from signing any bills after the close of the session. Now, this provision will render it necessary that the Governor should have some time, before the close of the session, in which to examine bills, and sign or reject them. The provision under consideration would afford the requisite time, and also prevent, or tend to prevent hasty and inconsiderate legislation. It has been said that the Legislature will, in a great measure, be relieved from embarrassment by the transfer of local legislation to local boards, and by certain other provisions which it is supposed will be adopted by the Convention, such as diminishing the volume of special legislation, and kindred measures. This is doubtless true, but after all we can do in this direction there will be very much business before the Legislature. This is a great State. It has vast and varied interests, and the Legislature will have enough to do after all the provisions we can adopt which look to restriction of its business, and it seems to me, therefore, that it is wise, that it is necessary to adopt some measure of this kind in order to prevent an evil which has so long existed. Perhaps some of the other provisions which have been offered as amendments may be better, but something of the kind should certainly be adopted.

Mr. GREELEY—Let me simply state that there is nothing new in this. You will find in section 4 of our present and most excellent Constitution [laughter], that it provides that the Governor shall communicate to the Legislature at every session the condition of the State and recommend such measures to them as he should judge expedient. That is all there is about it.

Mr. CHESEBRO—I am in favor of striking out this section entirely. I have listened some time to this debate to hear the gentlemen who are familiar with the action of the Legislature give us some plausible reason why this restriction should be retained in this arti-

cle. The only one which has been proposed by any gentleman familiar with legislation was proposed by my friend from Ontario [Mr. Folger]. And the immediate difficulty I conceive in regard to that, is this, that after all it will leave the whole matter within the control of the Legislature, and although they may pass joint resolutions five, ten or any number of days prior to the adjournment of the Legislature, that they will adjourn on such a day, and legislation may be conducted on that theory, still they have that resolution within their control at any time, and they may rescind it, and go on in the same way as if they had not passed any such resolution at all. The other consideration suggested by the gentleman from Clinton [Mr. Weed], in regard to the action of this Convention already, which is that we have limited the power of the Governor to sign bills to the actual session of the Legislature and forbidding him signing these bills after the Legislature adjourns, is one which I think was passed inconsiderately, and which I think will be reconsidered in this Convention. I voted for the restriction when it passed, and I think I did so without a full consideration of the effect of that vote, and since that section passed I have become satisfied from a more mature examination of it that it was erroneous. I do not believe it is possible for the Governor of the State properly to review the bills which shall be passed during the last days of the session, and sign them before the adjournment of the Legislature, and either we must have a provision that the Legislature shall remain in session a certain number of days after it shall have passed the bills, during which period there shall be no further bills passed, or we must give him time to examine them after the adjournment of the Legislature. It is impossible for him to make such an examination if this restriction is to be retained. Upon the theory that this provision which has already been adopted by the Convention is to be retained then I am opposed to the whole thing and hope it will be stricken out, for I am satisfied the Convention before we have adjourned will repeal that action and give the Governor some time after the adjournment of the Legislature in which to review the bills that may be passed.

The question was put on the amendment of Mr. Greeley and it was declared lost.

Mr. VERPLANCK—I offer an amendment as a substitute for the provision reported by the committee.

The SECRETARY proceeded to read the substitute as follows:

SEC. 7. No bill shall pass either house of the Legislature until five days have elapsed after its introduction.

Mr. VERPLANCK—Allow me to say in reference to this subject that it will obviate the objection which has been made in reference to the uncertainty as to the time of adjournment of the Legislature. The proposition is that no bill shall pass either house until five days after its introduction, so that if a bill is introduced into the house within five days of the time they shall finally adjourn, neither house will have power to pass the bill. I think this amendment meets the case.

Mr. RATHBUN—I do not see why the amendment proposed by the gentleman from Erie [Mr. Verplanck] does not effect the object and obviate the objections which have been raised, and leave the matter entirely clear for the Legislature. They certainly know when they adjourn whether a bill has been introduced five days prior to that time. It removes the uncertainty and difficulty of a prior establishment of the day for adjournment. I think it effects the object precisely.

Mr. PRINDLE—It seems to me the amendment of the gentleman from Erie [Mr. Verplanck], is liable to important and serious objection. It might be quite necessary that a bill should be passed in less than five days, and I think the instance cited by the gentleman from Westchester [Mr. Greeley], a short time ago, would be an instance of that kind. It seems to me it is better to strike this section out altogether. It must be evident to every member of the committee that it is a very difficult subject indeed. None of the amendments seem to reflect the object desired, and the discussions here by gentlemen who have had very large experience in the Legislature, show to my mind that the scheme is entirely impracticable. Besides, it seems to me we must have some little confidence in, and leave some things to the Legislature. Now, if a bill is introduced within five days of the adjournment, it must have the almost unanimous consent of both branches of the Legislature before it could pass. Sir, if we cannot trust the large majority, almost the entire of the Legislature, that are elected here to take care of the interests of the State, we might as well abandon all hope of good government.

Mr. WAKEMAN—If we are to have any restriction whatever, I am in favor of the amendment of the gentleman from Erie [Mr. Verplanck]. But it seems to me when the Legislature meets, it should be responsible for its action. We have already provided that no bill should be signed by the Governor after the adjournment of the Legislature. Now, when the Legislature is in session, let us treat it as a Legislature, and hold its members responsible for their action. I recollect in 1857 a bill was passed through the Legislature in good faith for a seemingly laudable purpose, and it turned out afterward that there was a fraud in it, and the person for whose benefit it was passed went to the office of the Secretary of State and was about getting a certified copy of that bill for the purpose of taking possession of certain persons, minors, when the real object of the bill was found out, and we repealed that bill within two hours after the time notice of the fact came into this chamber. It became absolutely necessary. A designing man got that bill through, the precise terms I do not now recollect, but I know when it was found out, there was an indignation in this hall that I had never seen the like of before, and the bill was repealed before the man could get possession of the minors and before he could leave the city of Albany. In that case, after finding out the design of that bill, it became absolutely necessary to take the step we did at once. Now sir, if we had been confined to five days by the Constitution of the State, that man under a certified law from the office of the Secre-

tary of State, would have gone beyond the reach of the Legislature and the police of the city. Is it not better, after all, when the Legislature is in session to say "you are responsible for your action as a Legislature; you are here for the purpose of enacting laws, and we will hold you responsible for the laws you enact"; and if members of the Legislature shall fail to introduce bills a sufficient time before the adjournment, they must know, as a matter of necessity, that the Governor cannot sign them, and they will necessarily fail. On the subject of allowing the Governor to sign bills after the adjournment of the Legislature, one gentleman [Mr. Chesebro] has said he has changed his mind on that subject. I hope if he has, other gentlemen have not, because that very restriction is a restriction I believe that will affect the very point we have up now. I shall vote for the amendment of the gentleman from Erie [Mr. Verplanck], and I shall vote again to strike out the whole section, for I believe that amendment is the best we have had on that subject. Leave the Legislature to act as a Legislature. Let the Legislature be responsible for their action, and if an occasion arises in which it is necessary to pass a bill or repeal a bill—

Mr. SMITH—I would like to ask the gentleman if the rule of holding members to personal responsibility is a good reason against passing this restriction, why it is not equally good against any restrictions upon the action of the Legislature.

Mr. WAKEMAN—We must recollect the object for which the Legislature meets. They are here for the purpose of enacting laws. That is their province, and of course we cannot meet all cases; it is impossible for us to tie them up. But it seems to me, sir, we are going a little too far. We have said a good deal in this hall on the subject of the corruption in the Legislature, and I believe it is right and proper to say it; it will have its effect on future Legislatures, I hope; but we ought to be careful we do not go too far. We must be careful that we do not tie ourselves up in attempting to restrict the Legislature. We must remember it is not the members of the Legislature themselves, it is the people behind the Legislature, who may want laws enacted, or have them repealed, and by restricting them too much it will not affect the members of the Legislature as much as it will the people behind the Legislature who will have necessity for legislation.

Mr. CHESEBRO—I understand that the gentleman is in favor of striking out this provision entirely?

Mr. WAKEMAN—Yes, sir.

Mr. CHESEBRO—Then suppose there are one hundred bills placed in the hands of the Governor on the last day of the session, what will you do with them?

Mr. WAKEMAN—They will see by having it understood from the commencement of the session that the Governor can sign no bill after the adjournment of the Legislature—members of the Legislature will conform their business to that action.

Mr. CHESEBRO—But you are opposed to giving them power to do that thing.

Mr. WAKEMAN—Let me go a little further, and answer the first question. I say that the

Governor, understanding he cannot sign bills after the adjournment of the Legislature, will make himself acquainted with important bills that are introduced and ought to be enacted, and will be prepared to sign the bills that the Legislature will pass. Now, all I have to say is, and what I believe, too, that the people of the country are a little alarmed at our action here. A day or two ago I was attending the circuit for a single day. I heard an eminent judge, a former member of the Convention of 1846, in his charge to the grand jury, make this a point to them on the subject of the purity of the ballot-box. In referring to that portion of the statute which requires him to charge the grand jury in reference to violation of election laws, he took occasion to refer to the Convention now in session, and referred to the corruption of the Legislature, and he made it a point before that grand jury to say that he was fearful, in correcting the evils of the past, we might tie up the people by restricting the Legislature too much, and I only speak of this as a single instance, and that we ought to be careful how far we go on this point of restricting the Legislature. Restrict them as far as you can with propriety, but let us be careful not to go too far in order to reach the points that have been raised here. We had better hold them responsible for their action, and say they shall not be restricted to five days, "but when you are in session, whether it be the first or the last five days of the session, be careful what kind of laws you pass."

Mr. ALVORD—I have had some experience in the Legislatures of this State, even back of the Constitution of 1846, and although the same provision which obtained in the Constitution of 1821 obtained in the Constitution of 1846, yet the practice under the former Constitution was different from the practice under the present. It had been the practice under that Constitution, sir, to have bills signed by the Governor before the adjournment of the Legislature. Every bill which was unable to receive the Governor's signature before the Legislature adjourned was, as a matter of course, as it was supposed to be under the Constitution itself, a defeated bill; and, sir, my recollection of those Legislatures is that it was a perfect turnpike road from each house of the Legislature to the Governor's room, and that there was just as much hasty legislation in those days as there has been in days subsequently. That very many bills were passed upon the last day of the session—hundreds in number—at the solicitation of members following bills into the Executive chamber, which were signed and came back laws, because they would not be laws unless they received the signature of the Governor during the session of the Legislature. I do not believe, myself, you are going to get rid of this difficulty by having the Governor sign the bills before the close of the session to the extent you desire. But, sir, I do believe that the gentleman from Erie [Mr. Verplanck] has hit the right method in this whole matter. We have too much hasty legislation. It is legislation which, at the last hours of the session, has no one else to attend to it except the person directly interested in it. Men get wearied out or get anxious in regard to their affairs, and are looking at those

and those only, and they pass measures through the body of the Legislature, without any reflection as to what they are, and they become in that way laws. I wish to state a single circumstance in contradistinction to the position taken by the gentleman from Genesee [Mr. Wakeman]. I recollect a circumstance of this kind, where one of the most outrageous acts that was ever put on the statute books of the State of New York, was passed by both houses and became a law, and went down to the office of the Secretary of State. It was all done within three days, only two days before the end of the session. When it got down there it was discovered to be an outrageous act, and a storm of indignation arose in the upper house of the Legislature here, such as I never saw before, sir, and it was almost instantly repealed; and when it was found out, and it came down to this house, every one was busy with their own affairs and desirous of attending to their own business, because the time of adjournment was fixed; and although it was attempted again and again to get the bill forward, on the ground of the outrageousness of the act, to be repealed in this house, it failed, and it remained on the statute book, to the disgrace of the State, and it was a year before it was repealed, but it gave rise to a storm of indignation at that time for all parties. The Legislature came together the next year and repealed it among the very first acts it did. Make it at least five days after the introduction of a bill before it shall become a law, and give the Legislature time to look at it in the interest of the public, and you will cure the entire of this evil. I trust, therefore, that the amendment of the gentleman from Erie [Mr. Verplanck] will not only prevail, but that it will be retained as a portion of the Constitution; and then, in connection with the fact that the Governor is bound to sign the bills before the Legislature adjourns, we may have some remedy in regard to this very great evil of the past.

Mr. SCHOONMAKER—The object to be attained, as the gentleman from Onondaga [Mr. Alvord] says, is to prevent hasty legislation. It strikes me the object is not fully attained by the amendment of the gentleman from Erie [Mr. Verplanck], because it does not prevent bills from being driven through by force of the previous question at any time. They may have been introduced four or five days previously, and subsequently may be driven through by force of the previous question in a single day. If an amendment is in order I have one drawn which I would like to offer at the proper time, which I will read:

"No bill shall be passed in either house until after it shall have been considered in Committee of the Whole; nor shall the final vote on its passage be taken in either house upon the same day it is reported by the Committee of the Whole."

That is an amendment which will prevent hasty legislation, but the amendment of the gentleman from Erie [Mr. Verplanck] will not.

Mr. GREELEY—I do not still understand whether it means five days in each house or five days in the whole Legislature. [Laughter.]

The CHAIRMAN—The Chair cannot inform the gentleman except by reading the amendment.

The question was then put on the amendment of Mr. Verplanck, and it was declared lost.

Mr. SEAVER—I desire to offer an amendment, and I believe it will secure the end sought to be attained.

The SECRETARY proceeded to read the amendment as follows:

Add to the section, "And the Legislature shall at least ten days before its final adjournment fix the day of such adjournment."

Mr. GREELEY—I hope the amendment will not be adopted. We have fixed in this Convention upon a day of adjournment, and I am afraid we cannot stand up to that. [Laughter.] I do not see the propriety of fixing it so that it cannot be changed because a few members desiring to embarrass the action of the Legislature, might render the adjournment very injurious and mischievous. I hope it will not be adopted.

Mr. KETCHAM—Though we have fixed on our day of adjournment for buncombe, I do not believe the Legislature will do any such thing. We fixed our day, and gentlemen did not expect we would adjourn at that time when they fixed it; it was nothing but buncombe, sir.

Mr. SEAVER—I suppose that it will not be necessary for the Legislature to fix—

Mr. RUMSEY—Will the gentleman from Franklin [Mr. Seaver] allow me to make a suggestion? If he will look on the next page he will see a provision that the Legislature on the day of final adjournment shall adjourn at twelve o'clock noon. The proposition will fit in there better than anywhere else.

Mr. SEAVER—I think the amendment I propose will come in here better than in the place indicated by the gentleman from Steuben [Mr. Rumsey]. Under this amendment, the Legislature will, at some period of its session, fix the day of adjournment, which must be done at least ten days before the day of adjournment. Now it works up to within three or four days of the time fixed; it finds that the time is too short, and then, or even on the day fixed for the adjournment, it can change the day; but it must be so fixed that it will be always determined ten days in advance of the time of adjournment; and this will give five days for the consideration of all bills, and that, I think, secures all that gentlemen desire.

Mr. BELL—It must be apparent to every one that no amendment that we can introduce here will meet every change of circumstances that may attend the legislative session. It is impossible to do so by a constitutional enactment. I think we have spent sufficient time in endeavoring to perfect that provision. From the nature of the case it cannot be perfected; and the better way now, after this vain attempt to amend it, is to strike out the section and pass to something else, leaving this to the Legislature, as it must be left in the end. There are so many circumstances coming up in the course of a session that it will be impossible to say when bills shall be introduced, or when they shall be considered, or when the final vote shall be taken. Other rules will sufficiently establish the principles of legislation, and we had better leave this to the Legislature. It will be safe in their hands. At all events, they will understand that the people of

the State will hold them to a strict responsibility. If in order, I will move to strike out the section.

The CHAIRMAN—There is an amendment now pending.

Mr. BELL—I hope it will be reached immediately.

The question was put on the amendment of Mr. Seaver, and it was declared lost.

Mr. SCHOONMAKER—I offer the following amendment:

"No bill shall be passed in either house until after it shall have been considered in Committee of the Whole; nor shall the final vote on its passage be taken in either house upon the same day it is reported by the Committee of the Whole."

Mr. BELL—This will do very well for the rules regulating the manner of conducting legislation, but it seems to me it is not a proper provision for a Constitution.

The question was put on the amendment of Mr. Schoonmaker, and it was declared lost.

The question recurred on the motion of Mr. Bickford to strike out the section.

Mr. REYNOLDS—I thought there was an amendment pending, offered by the gentleman from Ontario [Mr. Folger].

The CHAIRMAN—The Chair has not understood the gentleman from Ontario [Mr. Folger] to have formally offered an amendment.

Mr. WILLIAMS—I offer the following amendment:

Add at the end of the section the words "except upon the assent of two-thirds of the members of that house."

The question was put on the amendment of Mr. Williams, and it was declared lost.

Mr. BAKER—I offer the following amendment as a substitute:

SEC. 7. No bill shall be passed or become a law at any session of the Legislature, except the same shall have been introduced at least ten days prior to the adjournment thereof, and in case any such bill should pass the Legislature and receive the approval of the Governor, the same shall be null and void.

The amendment that I have offered is substantially the same as that offered by the gentleman from Erie [Mr. Verplanck]. The object of it is to prevent the introduction of bills just about the close of the session, when there is a large amount of business lying before the members—say from 1500 to 2,000 bills, calling upon them for examination before they can give an intelligent vote. The object of the amendment is to have a constitutional provision to prevent indiscreet, imprudent and vicious legislation; and in my judgment it is the duty of this Convention, if it is possible, to insert in the proposed Constitution a clause which will hereafter prevent what has given the Legislature in past times a bad reputation. I have had some little experience as a legislator within these halls; and I know the fact that in the last two days of the session, during the sessions that I was here, the clerk passed more laws than the body of the house, and it was no uncommon thing to adjourn and leave this city, a majority of the members not knowing even upon what bills they had voted. Bills would be introduced within the last forty-eight hours before the ad-

jourment—bills that the members proposing them or the projectors seeking to get them through the Legislature would not dare bring into these halls until they knew that the business had so accumulated before the body that they had not time to examine them. Then they would come in, and in the hurly-burly and confusion of that town-meeting, as one gentleman describes it, unanimous consent would be asked; and if the Speaker or the Clerk said it was granted, it was granted. If this provision that I propose is adopted, it will have this effect. The Legislature may keep on passing laws as long as they please, but no bill introduced within five days after adjournment shall become a law. I think that it is apparent to the intelligence of every gentleman in this body who has had anything to do with legislation, that all matters of importance will be introduced before the last five days of the session. It has been said by some gentleman—

Mr. BELL—I would like to ask the gentleman a question. Will not the removal of the restriction upon the session of the Legislature obviate this to a great degree?

Mr. BAKER—What restriction? I do not understand the question.

Mr. BELL—Will not the removal of the restriction as regards the term of the continuance of the session of the Legislature obviate that difficulty? At present the legislative term is confined to one hundred days. By our present Constitution we do not limit the time. Will not this obviate a great deal of this bad legislation that the gentleman speaks of?

Mr. BAKER—I do not understand that the Constitution of 1846 limits the duration of the session. It limits the payment of the per diem allowance and that had the effect, I admit, to limit the session to one hundred days; but there is no constitutional limitation. The Legislature may continue in session six months.

Mr. BELL—But in effect is it not so?

Mr. BAKER—The effect has been that the body of the Legislature would not stay after their per diem stopped. That has been the practical effect in the Constitution. I allege that under my substitute the great bulk of the important laws will be introduced prior to the last five days of the session every year; and it is only that class of legislation which is sought to be got through for special occasions—such as amending some section of the code at the instance of some lawyer to produce some particular effect on a suit that he is to try next week—that has been rushed in here within the last five days of the session—no, within the last two days of the session; and some counselor-at-law somewhere in the State secures a clause that perhaps changes the practice of the State so as to admit or exclude some witnesses or some evidence. That kind of legislation has frequently taken place in the Legislature within the last forty-eight hours of its session. If this clause be adopted, it will effectually exclude this; if it is not adopted, it is apparent to my mind that this Convention do not intend to provide the remedy that I believe the people seriously demand, and that their interests demand.

The question was put on the amendment of Mr. Baker, and it was declared lost.

The question then recurred and was put on the motion of Mr. Bickford to strike out the section, and it was declared carried.

There being no further amendment, the SECRETARY proceeded to read the next section, as follows:

SEC. 7. After a bill has been finally rejected by either branch of the Legislature, no bill or joint resolution containing the same substance shall be passed into a law during the same session.

Mr. SCHOONMAKER—I move to strike out the words "or joint resolution."

Mr. CONGER—I move to strike out the whole section. This provision as a general rule—

The CHAIRMAN—The question is upon the amendment offered by the gentleman from Ulster [Mr. Schoonmaker].

Mr. SCHOONMAKER—It has precedence over the motion to strike out the entire section.

The question was put on the amendment of Mr. Schoonmaker, and it was declared carried.

Mr. ANDREWS—I have no amendment to offer, but in my judgment it is not safe to allow that section to stand. I hope it will be stricken out.

The question was then put on the motion of Mr. Conger, to strike out the section, and it was declared carried.

The SECRETARY proceeded to read the next section as follows:

SEC. 7. No law shall be revised, altered or amended by reference to its title only, but the act revised, or the section or sections thereof altered or amended, shall be re-enacted and published at length, and the act so revised, or the part or parts thereof so altered or amended, shall be repealed.

There being no amendment offered to the section, the SECRETARY proceeded to read the next section as follows:

SEC. 8. The presiding officer of each house shall sign, publicly, in the presence of the house over which he presides, while the same is in session and capable of transacting business, all bills and joint resolutions passed by the Legislature, and the same shall not be so signed until they are fully enrolled.

Mr. CONGER—I move to strike that out. There is no reason in the world for requiring the clerical act of signing these bills by the Lieutenant-Governor and the Speaker of the house to be done while the house is in session and in the presence of the house.

Mr. MERRILL—I hope the committee will pause and reflect before it strikes out this section and deprives the honorable Senate and Assembly from witnessing the spectacle of the presiding officer sitting in his seat and "slinging ink" over the bills. [Laughter.] The practice has been to send the bills to the room of the presiding officer, where he could take it leisurely with his coat off, and run out his tongue, if that were his habit, in signing bills. [Laughter.] It seems to me that this has been carefully considered by the committee and should not be stricken out without consideration.

Mr. ALVORD—I have had the honor of being the presiding officer of both houses of the Legislature; and I have never signed any bills except

in this house or the house above, except bills which passed on the last day of the session when it was impossible to do so while the Legislature was in session. On such occasions they have been brought down to my room; but in no other cases during the periods in which I have had the honor to sign bills. One great objection I have to this section is that it devolves upon the presiding officer of either house, a very important and very delicate duty, and that is to decide whether the Legislature is "capable of transacting business." [Laughter.]

Mr. BICKFORD—I move to strike out the words in the third line, "and capable of transacting business," and insert, "before they commence lying round loose." [Laughter.]

The CHAIRMAN—The gentleman will please send up his amendment in writing.

Mr. BICKFORD—Perhaps I had better withdraw it. [Laughter.]

Mr. RATHBUN—I am opposed to the amendment of the gentleman from Rockland [Mr. Conger]. There is a kind of intuition, I know, in that gentleman; and I am not certain but it is perfectly reliable. Still, after a good deal of deliberation and consultation with some gentlemen of very respectable ability and of sound judgment with the concurrence of the whole number, I must be excused from giving way from their deliberate judgment to the intuition of the gentleman from Rockland [Mr. Conger]. It is very easy to move to strike out; but it may be very difficult to assign a reason for it. The proposition is in the hands of the Convention, and I have not the slightest objection to their disposing of it in any manner which they may see fit; but I would prefer that some examination should be made and some reason assigned, before they dispose of the labors of the committee in that way, by a motion to strike out, without reasons assigned. The committee were in pursuit of an object (which perhaps is not fully understood by the gentleman from Rockland [Mr. Conger], but which was to endeavor by such provisions as they thought would tend in that direction, to lay down, in all respects, a line of conduct for the Legislature that would tend to a regular order of business, by which there should be deliberation and decorum; and the public business should be done in a public manner, and to this end their judgment was that the presiding officers of the two branches of the Legislature should put their hands to laws which had been passed, and which were, after due consideration, ready for the signature of the Governor, in the presence of the two houses, as the Speaker of the House of Representatives does it, and not in a corner. Now, sir, if it is wrong, it is very easy for the house to dispose of it by striking out, or by amendment, or in any other way. In regard to the criticism upon the words "capable of transacting business," I inquired the meaning of those words. I had heard rumors sometimes that legislative bodies, at certain hours of their deliberations and particularly during the last hours—the small hours of night—were thought not to be exactly fit to transact business. Whether that was or was not the intention of the words used in this connection, was a subject of inquiry on my part; and I learned that the design

of those words was that there should be a quorum of the body present, not a mere fragment of the house. That was the object—that there should be a sufficient number of persons there to be "capable of transacting business" as a legislative body. If the words convey any other meaning than that, it is very easy to strike them out and insert "while the house is in session and a quorum present." That would convey the precise idea, as I understand it. That is a mere verbal amendment, which I propose to make, and I offer that now—that the words "and capable of transacting business" be stricken out, and the words "when the house is in session and a quorum present" inserted in lieu of them.

Mr. BARKER—Were the words put in there for any other purpose than of exacting from the house any other capacity than that it was duly organized and "capable of doing business," or does it demand some other qualification?

Mr. RATHBUN—It was not intended to call for anything more than that there should be a sufficient portion of the house present to transact business.

Mr. BARKER—I did not know but that it meant sobriety. [Laughter.]

Mr. RATHBUN—I now propose that the words "and capable of transacting business," be stricken out, and the words "a quorum being present" inserted.

Mr. GREELEY—I hope the motion to strike out will prevail, but not the motion to insert. Because I can imagine a case where, several members having gone away, a factious minority might defeat a very important bill, by simply running out of the house, and leaving it without a quorum. We are about to decree that the Legislature shall adjourn at twelve o'clock on the day of adjournment; and if you put in these words, at eleven o'clock twenty or thirty members may run out and leave the house without a quorum, and bills of importance may thus be defeated. I hope the motion to strike out will prevail, and I hope the alternative proposition will not be inserted.

Mr. MURPHY—I do not know but this provision may be relevant and practicable, but I do not see how it is to appear that those bills were signed in the presence of the Legislature. How does that fact become known?

Mr. GREELEY—By the signature.

Mr. MURPHY—But suppose it was signed when the house or Senate were not in session?

Mr. GREELEY—It would be a violation of the Constitution which I trust no presiding officer would dare to commit.

Mr. RUMSEY—I suggest that if it was an act required by the Constitution, it would probably appear from the Journals that those bills were signed in the presence of the house.

Mr. MURPHY—How will it appear upon the Journals?

Mr. RUMSEY—In the same way that any other fact transpiring in the house appears. The Clerk will put it there; it is his duty.

Mr. MURPHY—I can understand, if the presiding officer should announce that he has signed such and such bills, or that he has refused to sign such and such bills, a minute could be made by the Clerk of that fact, and that that fact would

appear upon the record; that they were signed in the presence of the house. I do not know but that this is a wise provision. I am not speaking against the provision; but I desire that it be made practicable, and that we shall have a record of the act; and unless you do have something of that kind, this provision, it appears to me, will be a complete nullity.

Mr. RUMSEY—I have never had the honor of being a member of the Legislature, and probably never shall have, but I have heard of transactions of this kind, of bills reported as correctly and properly enrolled by the Engrossing Committee, which between that time and the time they have been signed by the officers of the house, have been changed and become entirely different things, containing provisions that ought not to have been in them. If the proposition in this section is fairly carried out it will amount to this: after the Engrossing Committee report it to the house as properly engrossed, that fact will be entered on the Journal, and it will also appear at the same time, from the Journal, that the presiding officer of the house, signed it at that time. The Journal will thus show that the bill is a perfect thing, and it cannot thereafter very readily be changed. The fact of its being signed by the officers of the two houses ought always to appear from the Journal. It seems to me, in view of these allegations of fraudulent changes made in bills in their passage from one place to the other, in the progress of legislation, that this section ought to be adopted. The committee did not originate the section themselves. It is a proposition contained in the Constitutions of four other of these United States, and the committee thought that it ought to be adopted here and that the Journal in the houses should be so managed as to show all these things took place in their natural and legitimate order.

Mr. ALVORD—The gentleman from Steuben [Mr. Rumsey] does not seem to understand the manner in which these matters are done, and must necessarily be done in the Legislature of this State. A bill is proposed in the Senate, and it is finally passed through all stages except the third reading. It is then sent to the Committee on Engrossed Bills and ordered to be engrossed for the third reading. It is engrossed; it is engrossed before it is passed upon the third time. It is then passed and is signed by the officer presiding in that house, and goes to the other house. It has to go through all the operations of examination there, and may be amended over and over again. Perhaps it is amended and comes back into the house where it originated, which house agrees with the amendment, and then it has to be re-engrossed. That is after all this work has been done. After it is re-engrossed as amended, and is agreed to by both houses, it is again signed by the officer of the house where it originated. It goes then to the other house again, and is signed by the presiding officer. It then goes to the Governor for his signature. Now, I never have heard, in all my experience, where there has any wrong been committed by the signing of an engrossed bill. A bill, after it is engrossed the last time, is never again read in either of the houses; if it is signed by the presiding officer as a

matter of course. It seems to me that to carry out the provisions that these gentlemen propose, they should go still further, and say after a bill is finally passed and has been finally engrossed, it shall be read over in the presence of both houses, first in the one in which it originated, and then in the co-ordinate branch, and read over again there, and signed by the presiding officer. I believe there is, in the provision allowing the Governor to sign bills only during the session of the Legislature, all the safeguard we can have in this matter; that this is a matter by which we cannot, by any possibility, be benefited by any other constitutional enactment. The case the gentleman from Steuben [Mr. Rumsey] has undertaken to speak about is entirely a different case from any I have ever seen. I have not known of any case where the presiding officer of either house has signed any engrossed bill at any other place than within the body of the house he presided in, except after the adjournment of the Legislature. That is entirely avoided now by the fact that no bill can be signed by the Governor except during the session of the Legislature. In times gone by, when three hundred, four hundred or five hundred bills were passed on the last days of the session, and the adjournment came directly upon the passage of the bills, then the presiding officer, as a matter of course, had to remain in Albany to sign the bills. It is desirable that the Governor should sign all bills before the Legislature adjourns; but, as a matter of course, they have all to be engrossed and signed by the presiding officers. The simple provision that they shall be signed by the Governor before the adjournment of the Legislature is sufficient.

Mr. BELL—Just at this point I would like to say that this practice of allowing bills to be re-engrossed after the adjournment of the Legislature is liable to very great abuses. After the adjournment of the Legislature there is no responsible body to examine these bills and see whether they have been correctly engrossed or whether the engrossed bill compares precisely with the amendments and the original bill. It has been more than suspected that many important amendments have been made in the engrossing-room. Now we see the propriety of the action we have taken in requiring that these bills shall be perfected before the adjournment of the Legislature, and engrossed and signed by the presiding officers of the respective houses, and also by the Governor, previous to the adjournment of the Legislature. I am of the opinion that the section under consideration might as well be dispensed with.

The question was announced on the amendment offered by Mr. Rathbun, to strike out the words "capable of transacting business," and inserting in lieu thereof the words "when the house is in session and a quorum present."

Mr. GREELEY—I ask a division of the question on the amendment of Mr. Rathbun.

The CHAIRMAN—The Chair understands this amendment to be indivisible.

The question was put on the amendment of Mr. Rathbun, and it was declared lost, by a vote of 34 to 38.

A DELEGATE—There is no quorum voting.

The CHAIRMAN—The Chair is of the opinion

that there is a quorum present, and gentlemen are requested to vote.

The question was again put on the amendment, and it was declared adopted, on a division, by a vote of 49 to 35.

The question was announced on the motion of Mr. Conger, to strike out the entire section.

Mr. FULLER—I hope that motion will prevail. I have listened attentively to hear some good reason why this section should be retained, and I have failed to hear it. I hope, therefore, the section will be stricken out.

The question was put on the motion of Mr. Conger, and it was declared carried.

There being no further amendment the SECRETARY proceeded to read the next section as follows:

SEC. 9. On the day of its final adjournment the Legislature shall adjourn at twelve o'clock at noon.

Mr. FULLER—I move to strike out that section. The mistake which the committee have made is that they have attempted to frame a set of rules for the Legislature instead of making a Constitution.

Mr. RUMSEY—The committee did not consider this a rule at all, except as it should be a controlling rule on the action of the Legislature. A man who has ever heard of the closing scenes of most Legislatures should be satisfied that this provision is one that should be adopted. It provides a time for the adjournment of this body when everything shall be open and exposed to view, when they are prepared to explain every thing that is going on. It was with that view that the proposition was presented; and I will say further that it was copied from the Constitution of a sister State.

Mr. BICKFORD—I move to strike out the words "at noon." [Laughter.] I suppose if they are struck out the time of adjournment then will be at midnight, or at least it will be uncertain, so they can take their choice. [Laughter.]

Mr. McDONALD—It seems to me we have got in the way of striking out at this time. We should see that we do not strike out too much. The gentleman from Jefferson [Mr. Bickford] has made an amendment entirely unnecessary, because the hour he suggests at midnight is the hour now usually adopted. As has been well stated by the gentleman from Steuben [Mr. Rumsey], if there is anything desirable, it is that the last hours of the Legislature, in which more legislation is done than in double the time previous, should be during daylight. If you make the hour twelve o'clock at noon, you will thereby lessen at least the dangers now arising from adjourning, as they usually do, at midnight. It seems to me the resolution ought to be adopted. It can do no hurt, and it may do much of good.

Mr. BICKFORD—Will the gentleman allow me to ask him a question?

Mr. McDONALD—Yes, sir.

Mr. BICKFORD—What are those dangers? [Laughter.]

Mr. McDONALD—If the gentleman had been here during the last session he would see them in the adjoining ante-room.

The CHAIRMAN—Does the gentleman from

Jefferson [Mr. Bickford] insist upon his amendment?

Mr. BICKFORD—Yes, sir, I insist.

Mr. McDONALD—My answer to the gentleman from Jefferson [Mr. Bickford] is this, that the dangers will be found in the ante-room, and are perpetrated in the hours of night, not the hours of the day.

Mr. KETCHAM—I believe that the closing scenes of the Legislature had better be at night than in the day-time, as suggested by the gentleman from Ontario [Mr. McDonald].

The question was put on the amendment of Mr. Bickford, and it was declared lost.

The question recurred and was put on the motion to strike out the entire section, and it was declared lost, on a division, by a vote of 44 to 52.

Mr. E. BROOKS—Before the committee proceeds to read the next section in reference to the charities of the State, I will state that the Committee on Charities and Charitable Institutions will be ready to report in the morning, and that their report comes in conflict with the section which is now to be read; and in reference to the fact that the minority of the Committee on the Powers and Duties of the Legislature have considered this section, and their report is not yet upon our tables, I respectfully move, as chairman of the Committee on Charities, that the committee now rise and report progress.

The question was put on the motion of Mr. Brooks, and it was declared carried.

Whereupon, the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. COOKE, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Legislature, its Powers and Duties, etc., had made some progress therein, but not having gone through therewith, had instructed their Chairman to report that fact to the Convention, and ask leave to sit again.

The question was put on granting leave, and it was declared carried.

Mr. AXTELL—I move the Convention do now adjourn.

The question was put on the motion of Mr. Axtell, and it was declared carried.

So the Convention adjourned.

FRIDAY, August 30, 1857.

The Convention met at ten o'clock A. M.

Prayer was offered by Rev. STEPHEN L. STILLMAN.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. STRONG—I ask leave of absence for one week.

There being no objection, leave was granted.

Mr. BARNARD—I ask leave of absence after this morning's session until Tuesday morning.

Mr. GREELEY—I object to any leaves of absence for to-morrow. We are going to be left without a quorum. After that I have no objection.

The question was put on granting Mr. Barnard leave of absence, and it was declared carried.

Mr. MATTICE—I ask leave of absence from to-morrow morning's session.

Mr. GREELEY—I object.

The question was put on granting Mr. Mattice leave of absence, and it was declared carried.

Mr. FOWLER—I ask leave of absence for Mr. Case for another week. He is still confined to his bed by sickness.

The question was put on granting Mr. Case leave of absence, and it was declared carried.

Mr. E. BROOKS—I shall be necessarily detained to-morrow, and respectfully ask leave of absence.

Mr. GREELEY—I object.

The question was put on granting Mr. E. Brooks leave of absence, and it was declared carried.

Mr. WICKHAM—I desire to ask leave of absence after this morning until next week. I have to be before the surrogate of Suffolk county.

The question was put on granting Mr. Wickham leave of absence, and it was declared carried.

Mr. CORBETT—I ask leave of absence for my colleague, Mr. Hiscock, until to-morrow morning.

The question was put on granting Mr. Hiscock leave of absence, and it was declared carried.

Mr. POND—I desire to ask leave of absence until Tuesday next, after this morning's session.

Mr. GREELEY—I object.

The PRESIDENT—The Chair understands the gentleman from Westchester [Mr. Greeley] as objecting to any leave of absence being granted, except in case of sickness.

The question was put on granting Mr. Pond leave of absence, and it was declared carried.

Mr. BOWEN—I ask leave of absence for Mr. Flagler until next Tuesday.

The question was put on granting Mr. Flagler leave of absence, and it was declared carried.

Mr. T. W. DWIGHT—I present a memorial from a gentleman who has had thirty years' experience in connection with the public press in the city of New York asking some constitutional provision to preserve the liberty of the press.

Which was referred to the Committee on the Preamble and Bill of Rights.

Mr. BEADLE presented a petition, asking for the abolition of the body known as the Regents of the University.

Which was referred to the Committee on Education.

Mr. GREELEY presented the petition of Socrates Smith and others for the prohibition of the sale of intoxicating liquors as a beverage.

Which was referred to the Committee on Adulterated and Intoxicating Liquors.

Mr. FOLGER—I submit at this time the report of the standing Committee on the Judiciary. The report, which is as follows, is signed by all the members of the committee except Mr. Comstock. I telegraphed to Mr. Comstock for his signature to the report and he answered by the simple word "No." I wish to ask leave until Tuesday next for Mr. Goodrich to present a minority report.

The PRESIDENT—There being no objection, such leave is granted.

Mr. FOLGER proceeded to read the report, as follows:

The undersigned, a majority of the Committee on the Judiciary, report the following article:

It is the conclusion which the committee has arrived at after weeks of laborious consideration, of exhaustive discussion and many votes upon various propositions, and is as nearly as possible the harmonizing of differing and opposite views.

Dated, August 30, 1867.

CHAS. J. FOLGER,

Chairman

WM. M. EVARTS,
JOS. G. MASTEN,
GEORGE BARKER,
JOSHUA M. VAN COTT,
CHAS. P. DALY,
W. HUTCHINS,
F. KERNAN,
THEODORE W. DWIGHT,
AMASA J. PARKER,
CHAS. ANDREWS,
EDWARDS PIERREPONT,
MATTHEW HALE.

ARTICLE VI.

SECTION 1. The Assembly shall have the power of impeachment, by a vote of the majority of all the members elected. The court for the trial of impeachments shall be composed of the President of the Senate, the Senators, or a major part of them, and the judges of the court of appeals, or the major part of them. On the trial of an impeachment against the Governor, the Lieutenant-Governor shall not act as a member of the court. No judicial officer shall exercise his office after he shall have been impeached, until he shall have been acquitted. Before the trial of an impeachment the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to evidence, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this State; but the party impeached shall be liable to indictment and punishment according to law.

§ 2. There shall be a court of appellate jurisdiction, called the court of appeals, composed of seven judges, who shall be elected by the electors of the State, and shall hold their office during good behavior, until the age of seventy years. They shall designate one of their number as chief justice, who shall act as such during his continuance in office. Whenever a vacancy shall occur in the office of chief justice, it shall be filled by the judges of the court from among their number. The judges of the court of appeals shall have power to appoint and remove a clerk of said court, a reporter thereof, and such attendants as shall be authorized by law.

§ 3. Upon the organization of the court of appeals under this Constitution, the causes then pending in the present court of appeals shall become vested in the court of appeals hereby created. Such of said causes as are pending on the first day of January, eighteen hundred and sixty-eight, shall be heard and determined by a commission to consist of five commissioners

of appeals. But the court of appeals hereby created, for cause shown, may order any cause thus pending before the said commissioners, to be heard in the court of appeals hereby created. Such commission shall consist of the judges of the present court of appeals elected thereto, and a fifth commissioner, who shall be appointed by the Governor, by and with the advice and consent of the Senate.

§ 4. If any vacancy shall occur in the office of said commissioners, it shall be filled by appointment by the Governor, by and with the advice and consent of the Senate; and if the Senate is not in session, by the Governor, but in such case the term of office shall expire at the end of the session of the Senate next after such appointment. The said commissioners shall appoint from their number a chief commissioner (and may appoint and remove such attendants as shall be provided for by law); (and may in like manner fill all vacancies in such appointments). The reporter of the court of appeals shall be the reporter of said commissioners. And the decisions of said commissioners shall be certified to and entered and enforced as the judgment of the court of appeals. The said commission shall continue for three years, unless the causes committed to it are sooner determined. If at the end of three years from the time of entering upon its duties, all the causes assigned to such commission shall not have been heard and determined, those remaining undetermined shall be heard and determined by the court of appeals hereby created.

§ 5. At the end of ten years from the adoption of this Constitution by the people, the Legislature shall have power to provide for the appointment of a commission to hear and determine such causes as may be transferred to it by the court of appeals, in such manner as the Legislature may direct.

§ 6. There shall be a supreme court having general jurisdiction in law and in equity, subject to such appellate jurisdiction of the court of appeals as may be prescribed by law. The Legislature at its session next after the adoption of this Constitution, shall divide the State into four judicial departments, and (each of said departments) into (two) districts to be bounded by county lines. The city and county of New York shall form one district. There shall be thirty-four justices of the said supreme court; ten thereof in the department in which is the city and county of New York, and (eight) in each of the other departments. But the Legislature shall have power to provide for an additional justice in each of said departments.

§ 7. The Legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and equity, as they have heretofore possessed.

§ 8. Provision shall be made by law for designating from time to time the justices who shall hold the general terms, and also for designating a chief justice of each department, who shall act as such during his continuance in office. Four of the said judges shall be designated to hold the general term, and three thereof, shall form a quorum. And any one or more of said judges may

hold special terms, and circuit courts, and any one of them may preside in courts of oyer and terminer in any county.

§ 9. No judge, either of the court of appeals or of the supreme court, shall sit in review of his own decision.

§ 10. All vacancies in the office of the judge of the court of appeals or of justice of the supreme court, shall as these occur be filled by election by the electors of the State, at the general election next after the vacancy shall occur. But the Governor, by and with the advice and consent of the Senate, when the Senate is in session, and the Governor, when the Senate is not in session, may fill such vacancy by appointment, which shall continue until the first day of January next after such general election.

§ 11. At the general election in the year 1870 there shall be submitted to the people, in such manner as the Legislature shall provide by law, to be determined by the electors of the State, the question: "Shall vacancies as they occur in the office of the judges and justices mentioned in sections 2, 5 and 15 of this article be filled by appointment?" And if the majority of all the electors voting at such election shall vote that such vacancies shall be so filled, then thereafter all vacancies in the office of judge of the court of appeals, justice of the supreme court, judges of the superior court of the city of New York, and of the court of common pleas for the city and county of New York, and of the superior court of the city of Buffalo, shall be filled by the Governor, by and with the advice and consent of the Senate, or, if the Senate is not in session, by the Governor, but in such case the term of office shall expire at the end of the session of the Senate next after such appointment.

§ 12. The judges of the court of appeals, and the justices of the supreme court, shall not hold any other office or public trust. All votes for either of them for any elective office (except that of justice of the supreme court or judge of the court of appeals) given by the Legislature or the people shall be void. They shall not exercise any power of appointment to public office, except as is herein specifically provided.

§ 13. The times and places of holding the terms of the court of appeals and of the general and special terms of the supreme court within the several departments and districts, and the circuit courts and courts of oyer and terminer within the several counties, shall be provided for by law. But provision shall be made for holding general terms at convenient places in each of said districts.

§ 14. Judges of the court of appeals and justices of the supreme court may be removed by concurrent resolution of both houses of the Legislature, if two-thirds of all the members elected to the Assembly, and a majority of all the members elected to the Senate concur therein. All judicial officers, except those mentioned in this section, and except justices of the peace and judges and justices of inferior courts, not of record, may be removed by the Senate on the recommendation of the Governor. But no removal shall be made by virtue of this section unless the cause thereof be entered on the jour-

nals, nor unless the party complained of shall have been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense. On the question of removal, the ayes and noes shall be entered on the journal.

§ 15. There shall be in the city and county of New York, the superior court of the city of New York, and the court of common pleas of said city and county. And there shall be in the city of Buffalo, the superior court of said city. The said courts shall severally have the jurisdiction they now severally possess, and such other original and appellate civil and criminal jurisdiction as may be conferred by law. There shall be five judges of the superior court in the city and county of New York; five judges of the court of common pleas of the said city and county of New York; and three judges of the superior court of the city of Buffalo. The judges of the said courts, respectively, shall designate one of their number as chief justice, who shall act as such as long as he continues in office. Vacancies in said courts shall be filled in the same manner as vacancies in the office of justice of the superior court, as is hereinbefore provided.

§ 16. Justices of the supreme court shall be elected by the electors of their respective departments; judges of the superior court of the city and county of New York, and of the court of common pleas of the city and county of New York, by the electors of that city and county; and judges of the superior court of the city of Buffalo, by the electors of that city. The said justices and judges shall hold their offices during good behavior until they respectively attain the age of seventy years.

§ 17. The judges and justices of the courts of record, hereinbefore mentioned in this article, shall receive at stated times for their services, a compensation to be fixed by law, which shall not be diminished during their respective terms of office.

§ 18. There shall be elected in each of the counties of this State, except the city and county of New York, one county judge, who shall hold his office for seven years. He shall hold the county court and perform the duties of the office of surrogate. The county court as at present existing, shall be continued with such original and appellate jurisdiction as shall from time to time be conferred upon it by the Legislature. The county judge with two justices of the peace, to be designated according to law, may hold courts of sessions, with such criminal jurisdiction as the Legislature shall prescribe, and perform such other duties as may be required by law. The county judge shall receive an annual salary, to be fixed by the board of supervisors, which shall not be diminished during his continuance in office. The justices of the peace for services in the courts of sessions shall be paid a per diem allowance out of the county treasury. In counties having a population exceeding forty thousand, the Legislature may provide for the election of a separate officer to perform the duties of the office of surrogate, whose term of office shall be the same as that of county judge. Inferior local courts, of civil or criminal jurisdiction, may be established

by the Legislature in cities; and such courts, except for the cities of New York, Brooklyn and Buffalo, shall have an uniform organization and jurisdiction in such cities.

§ 19. The county judge of any county may preside at courts of sessions or hold county courts in any other county (except the city and county of New York, and the county of Kings), when requested thereto by the county judge of said other county.

§ 20. The Legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of county judge and of surrogate, in cases of their inability or of a vacancy, and to exercise such other powers in special cases as may be provided by law.

§ 21. The Legislature may re-organize the judicial department and districts at the first session after the return of every enumeration under this Constitution, in the manner provided for in the — section of this article, and at no other time. But the Legislature shall not increase the number of the departments or of the districts.

§ 22. The electors of the several towns shall, at their annual town-meeting, and in such manner as the Legislature may direct, elect justices of the peace, whose term of office shall be four years. In case of an election to fill a vacancy, occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the peace and judges or justices of inferior courts, not of record, and their clerks, may be removed after due notice, and an opportunity of being heard in their defense by such county, city or State courts, as may be prescribed by law for causes to be assigned in the order of removal.

§ 23. All judicial officers of cities and villages, and all such judicial officers as may be created therein by law, shall be elected or appointed at such times, and in such manner, as the Legislature may direct, except as herein otherwise provided.

§ 24. Clerks of the several counties of this State shall be clerks of the supreme court, with such powers and duties as shall be prescribed by law. The clerk of the court of appeals shall keep his office at the seat of government. His compensation shall be fixed by law and paid out of the public treasury.

§ 25. No judicial officer except justices of the peace, shall receive to his own use, any fees or perquisites of office; nor shall any judicial officer in the State, except a county judge, or surrogate, or special county judge or surrogate, or justice of the peace, or police justice; nor shall any judicial officer in the city of New York, or in the city of Brooklyn, practice as an attorney or counselor-at-law in any court of record in this State, or act as referee.

§ 26. The Legislature may authorize the judgments, decrees, and decisions of any local inferior court of record of original civil jurisdiction, established in a city, to be removed for review, directly into the court of appeals.

§ 27. The Legislature shall provide for the speedy publication of all statute laws, and of such

judicial decisions, as it may deem expedient. And all laws and judicial decisions shall be free for publication by any person.

§ 28. The first election of judges of the court of appeals, and of justices of the supreme court, and of judges of the superior court and court of common pleas of the city and county of New York, and of the superior court of the city of Buffalo, shall take place at such time as the Legislature shall prescribe between the first Tuesday of April and the first Tuesday of June, one thousand eight hundred and sixty-eight. The said courts and the commissioners of appeals shall respectively enter upon their duties on the first Monday of July next thereafter.

§ 29. On the first Monday of July, one thousand eight hundred and sixty-eight, jurisdiction of all suits and proceedings then pending in the present supreme court, shall become vested in the supreme court hereby established. Proceedings pending in county courts and in suits originally commenced in courts of justices of the peace, shall be and remain in the county courts as is now provided for by law. The courts of oyer and terminer hereby established, shall in their respective counties have jurisdiction on and after the day last mentioned, of all indictments and proceedings then pending in the present courts of oyer and terminer. Indictments and proceedings pending in the court of general sessions of the peace in the city of New York, shall be and remain in the said court, subject to all provisions of law relating thereto. Indictments and proceedings pending in the courts of sessions in the several counties of this State shall be and remain in the said courts, subject to all provisions of law relating thereto.

§ 30. The judges of the present court of appeals, and the justices of the present supreme court, are hereby declared to be severally eligible to any office at the first election under this Constitution.

§ 31. County judges, justices of the peace, and coroners in office when this Constitution shall take effect, shall hold their respective offices until the expiration of the term for which they were respectively elected.

§ 32. All local courts established in any city or village, including the surrogate's court of the county of New York, shall remain, until otherwise directed by the Legislature, with their present powers and jurisdictions; and the judges of such courts, and any clerks thereof, in office on the first day of January, one thousand eight hundred and sixty-eight, shall continue in office until the expiration of their terms of office, or until the Legislature shall otherwise direct.

§ 33. The Legislature may create probate courts, abolish the office of surrogate, confer upon existing courts the powers and duties of surrogates and the jurisdiction of surrogates, create registers of wills and the probate thereof, and of letters of administration, and provide for the trial by jury of issues in surrogates' courts, and in courts having the like powers and duties.

Mr. FOLGER.—There are two appendages to this report, one a digest of the Scottish system of jurisprudence, and the other a report from the office of the surrogate as to the amount of business which we wish to have printed.

Which was referred to the Committee of the Whole and ordered to be printed.

Mr. E. BROOKS from the Committee on Charities and Charitable Institutions submitted the following report:

The SECRETARY proceeded to read the report as follows:

ARTICLE —.

SECTION 1. The Legislature shall establish a board of commissioners of charities, consisting of eight persons, a majority of whom shall constitute a quorum who shall have power to visit, inspect, and to require reports from charitable institutions of every nature and description whatever, whether established by individuals, or supported or aided by the State, except religious organizations of a sectarian character, penal and correctional institutions, and educational institutions otherwise controlled by law. Such board shall report to the Legislature. It shall also give notice to the Attorney-General of any breach of trust in the management of such institutions or their funds, who shall thereupon refer the question of such breach of trust to the proper court. The members of such board shall be appointed by Governor with the consent of the Senate. Their term of office shall be eight years, and they shall be so classified that one shall go out of office in each year.

§ 2. Any person or persons may establish or increase the endowment of a charitable institution for the support of the poor, the advancement of learning and other lawful and public purpose. Such institutions shall be established, and its funds administered in accordance with the rules of courts of equity, but the Legislature shall have power to limit the amount which a testator may devise or bequeath for charitable purposes.

No charitable gift, devise or bequest shall be declared invalid for want of a trustee, and the proper court shall, if necessary, appoint a trustee. Whenever property is devised or bequeathed in trust for charitable purposes, but not to an institution authorized by statute law to take it, the board of charities shall inquire and report whether there is any objection to the trust growing out of the condition of the testator's family or of any claimants on his bounty. If the report is adverse, the charitable provision shall fail; if favorable, the proper court shall carry the trust into effect. It shall be no objection to a charitable trust that it is perpetual. The board of charities may, at the end of thirty years after the establishment of a charity, inquire whether it is practicable that the property should be continued in its present employment; on their report that such employment is no longer practicable, such property may, under the sanction of the court, be devoted to other public uses. This section shall not apply to the institutions excepted in the first section of this article.

§ 3. No charitable institution shall receive State aid except under the following conditions:

1. Application for such aid shall be made to the board of charities, at least two months before the meeting of the Legislature.

2. The board shall examine into the circumstances of the case, and report that the institution claiming such aid tends to relieve the State from

expense with the amount of such relief, and that it is not religious or sectarian in its character, and that a majority of its managers are not members of one religious denomination.

3. If the same institution has previously received State aid, it must be reported that such aid has been fairly applied to the purposes for which it was bestowed.

§ 4. The Legislature may provide that any donor of charitable funds may direct that such funds shall be invested in the registered bonds of this State, or of the United States, to be held in the name of the Comptroller. In such case they shall be so held and the interest or income thereof shall be paid to the institution for whose benefit they are designed. The bonds shall only be transferred by the Comptroller, for the purpose of re-investment. The Legislature may further provide, that trustees of charitable institutions may avail themselves of the benefits of this provision.

EXPLANATIONS.

The Committee on Charities and Charitable Institutions, which, at the organization of the Convention, and by a special vote of its members, was deemed a necessary part of the body, respectfully

REPORT:

That they have had under consideration the charities of the State, and the duty of the State in regard to their support and superintendence. That they have considered them both in reference to the large drafts made upon the State treasury for their support, their growing numbers, their influence upon the people, the tendency to diffuseness of distribution instead of concentration of effort, and in all their important bearings upon the State, the people and different classes of the community.

While, in our country, we desire always to recognize the duty of simplicity in the administration of government, and of economy in all appropriations, not less for objects of humanity than for what are generally regarded as more necessary State purposes, we also feel that the State should be not less the friend of the poor than of the rich, and not less the guardian of those who suffer by want and sorrow, occasioned by human infirmities, than of those who are blessed with property and health. While we must always distinguish between those old and existing ideas of church and State common to our British ancestors and to the governments of the old world, we cannot escape those obligations, moral and material, which the State imposes upon all its citizens, and which in return demands from the State a like performance of moral and material service toward all who reside within the commonwealth. These obligations are mutual. The people have consented to bear all the burdens of government in order to enjoy its protection, and not the least of these burdens are the increased exactions for military service, for jury duty, and for whatever service the State may constitutionally impose.

Committees which have already reported to this body desire to limit State aid for its suffering and needy fellow-citizens to a very small class of

dependent people. They are willing to make provision for the education of the deaf and dumb, the blind, the insane and idiotic, and for a class of juvenile delinquents, but none whatever for our hospitals, our orphan asylums, our dispensaries; none for providing medicine for the sick poor, for the homes of the friendless, for established houses of refuge, for eye and ear infirmaries; none for institutions for foundlings, one of which is established to prevent child-murder, which has become the great crime of the age; none for local prisons and reforms, nor for any charity except those now established by law and under the supreme control of the State.

Your committee do not propose general and constant relief for any or for all these objects, nor, indeed, any relief whatever, except where it can be shown to be the duty of the State to grant it, nor where such aid cannot be defended upon principles of just economy. So long as human lives are worth saving, and the morals of the people worth preserving, so long as the prevention of crime and of other evils are objects worthy of human effort, just so long is the State bound to interpose its power and means in behalf of those charities, which, upon proof and trial, shall be found worthy of public aid. And let it not be said that the support of such institutions belongs either to local corporations or alone to citizens. When the State has done all that it will do, or all that it can or ought to do, the demand upon counties, towns, villages, cities, and persons able to give are quite enough to exhaust the means of all such organizations. There are also, in all communities, objects of local, social, domestic, State, federal and foreign charity. It is the duty of all humane persons, who are able to do so, to feed the hungry, clothe the naked, minister to the sick, comfort the forsaken, raise the fallen, and, in a multitude of ways known of men and honored of God, to relieve the misfortunes of their fellow men. It is a wise human maxim that it not only becomes men to mean well, but to do well; but a still higher record in holy writ teaches us that pure religion and undefiled before God and the Father is this: "To visit the widows and fatherless in their affliction."

But when all personal, local, moral, political and religious duties are discharged, a vast work remains for the State. We educate the children of the people at the expense of the State. We impose taxes upon the childless for the support of those who have children. We build canals through the State and across the State, and impose equal taxes upon a portion of the people who live hundreds of miles from those who are directly benefited by such improvements. To the same end we have given three millions of dollars to one railroad corporation, and three-quarters of a million to another, and have declared that the people of the extreme northern and southern parts of the State should pay their share of the general tax.

In like manner the State is in various ways taxed to support local, or partially local objects, from the general fund and general tax. Your committee do not complain of this, but insist that a just and generous people will never rest content with unlimited expenditure for objects of material

use at the cost of those public benevolences which are now the brightest jewels in the crown of the Empire State.

In twenty full years we have paid as a State for all the public, private, religious, educational and charitable institutions, chartered, incorporated and not chartered, including, of course, what are called State, charitable and other institutions, such as orphan asylums, hospitals, dispensaries, colleges, universities, normal schools, agricultural colleges, etc., etc., \$6,920,881 (not over one-fifth of a mill upon the assessed value of the State), and of this amount the orphan asylums and kindred institutions have received \$617,120.16, the hospitals and kindred institutions \$823,289.53, and all the dispensaries \$142,579.05, making a total in over twenty years of \$1,582,981.74.

The academies, which for the objects and purposes of your committee, form no part of the State charities, have received in the same time, \$1,144,661.72; and the academies and colleges together, \$1,347,781.63. Add miscellaneous items, \$218,208.40, and we have a total of \$1,565,190.03, which is nearly equal to all that has been expended upon institutions throughout the State for all objects of charity, excepting those established for the relief of the deaf and dumb, blind, idiots, insane, and juvenile delinquents. For all charities, as stated, the State has paid \$6,920,881 in twenty years, and for mere canal repairs \$10,578,261 in twelve years.

Your committee do not see the justice of discriminating between one and another class of those who are morally delinquent, nor of those who are afflicted in body, mind or estate. The State is taxed heavily to support the criminals of the State in its three prisons at Sing Sing, Auburn and Clinton. With what reason can it pay so much money to punish crime and refuse anything to prevent crime? Is it because these institutions, associations and societies are local or personal in their organizations? If so, we think the answer is not a good one; first, because the State has a right for all the aid it gives, to secure some equivalent in return. It may do this, as your committee propose, by an authorized supervision, through a board of charities over all institutions receiving State aid, or by securing support in time and method for any number or class of persons corresponding with the aid given, or in any manner which may be prescribed by law.

Again, all well regulated private and local charities diminish the larger charities, and lessen the taxes of the people. Partial aid becomes universal good. To close our hospitals, orphan asylums and dispensaries—to shut the doors of those homes which are a refuge for the poor, is to make the State odious in the eyes of those who contribute most largely to its support. What is needed is revision, supervision and regulation, not the cold hearts and closed hands of refusal. Reform and build up, but do not pull down and destroy. If need be, limit the amount of your appropriations from year to year, but do not declare in the organic law of your State, that from henceforth and forever no charity shall receive aid from the State, except for the limited few in number now entirely controlled by State authority. The in-

creased crimes of the State need increased vigilance and increased means of preservation. Nor is it just in the opinion of your committee, to apply by law a great tax upon any class of people for the support of one department of local or State government, when that department is necessary for the protection of all. The income should be appropriated for the common good, or if for any service, that service should be for the relief of the destitute poor.

The infants whose lives are daily taken in this State by their wretched parents is placing the moral character of the commonwealth beneath some of the most despotic and debased governments of the Old World; and the appalling facts of murder and other crimes of distress and poverty, recorded in the reports and journals of the day, prove that this is not the time to arrest the power and means of the State in its mission either of preventing or punishing crime. There are also crimes which shall be nameless here, and which are largely upon the increase in New England, New York, and all over the country. It is enough to say that they affect the morals of the State, the future of its population, and the general welfare. The cities of the State, and especially its great metropolis, are supposed to be "the sores of the body politic;" but if crime centers in the city more than in the country, or if there seems to be more crime there than among the rural people, it is because the population is more dense and the means of concealment easier than elsewhere. Out of 195 cases of recent illegitimate childbirth in one of the New York city institutions—the hospital attached to the nursery and child's hospital—which the State and city of New York have, from time to time, aided—the mothers of only thirty-seven were born or reared in the city. The alleged wickedness of our cities in regard to many other crimes, it is believed, have the same origin.

In a record of "Fashionable Murders,"* called the "Cloud with a Dark Lining, or Serpents in the Dove's Nest" it is stated that there are in the city of New York alone over 400 advertised places devoted to the work of abortion, and where any woman may resort to effect the end desired. And New York is not the only sinful city in the land. In this generation the same New England divine assures us that there the families do not now average more than three and a half persons, and this is probably true of most parts of the country; and what is lamentably true, also, is that this crime is infinitely more common in Protestant than in Catholic countries.† Murder is the proper name given to the crime, of which, to quote the same Boston authority, "France with all her atheism, and Paris with all her license, is not so guilty as staid New England at the present hour."

Country and city share alike in this destruction of human life in one way, and the prevention of human life in another; and if it were necessary, it could be shown that there is not a constituency in this Convention to which, in a greater or less degree, the evil cannot be traced.

* Rev. John Todd, D. D., Boston. Lee & Shepherd.

† See "Why Not?" by Horatio E. Storer, M. D. Boston.

The power and duty of reform lies largely with the State, and in ways and means which can be demonstrated before any Legislature, society or body called upon to consider the subject.

For the State hospitals we may say that the largest appropriations for their relief were made during the recent civil war, and thousands of the brave men sent to the army were treated and cured in them. Tender and careful nursing, and constant and skillful ministrations to the sick and wounded, not only saved hundreds of lives, but assuaged the sorrows of the dying who passed ungroaning to their graves, blessing the State and people which made their last hours among the happiest of their lives.

Is this State, then, to do nothing for the widows and children of husbands who lost their lives in the service of the country? Nothing, under any circumstances, for children having destitute parents, or for infirm parents with destitute children? Nothing for premature old age and helpless infancy? Nothing for the wives and children of drunken parents, perhaps made so by the very statutes of the State? God forbid. Shall the State government be made rich by taxes placed on the sale of liquor, and do nothing for the wives and children of intemperate husbands and fathers? Can all these demands for relief be met in your county poor-houses, or from the uncertain relief incident to private charity?

Your committee most earnestly protest against any and all such conclusions, and rely in the future, as in the past, mainly upon wise, timely and efficient action by the State to secure what republican States were established for, which was and which is the greatest good of the greatest number of people, and at the least possible cost. As late as 1865, there were in fifty-three of the New York county poor-houses no less than thirteen hundred and forty-five insane poor. The sight of the great body of them was shocking to humanity, repulsive to every manly sensibility, and a disgrace to the Commonwealth. In the majority of cases there was neither cleanliness, godliness, nor any human comfort. Many slept almost naked in winter, upon straw pallets, some in narrow cells—not a few remained in their own filth, and, in winter and summer, with an absence of fresh air and everything like wholesome ventilation. Sane, insane and idiotic men often were confined together, and sometimes the most helpless and miserable were chained to the floor, surrounded by all their disgusting filth.

Your committee have neither the time nor the heart to consider all these cases in detail, but to all who seek information about the poor-house systems of the State we commend the report of ex-Senators Spencer, Bradford and Lee, published in 1857, and of Sylvester D. Willard, M. D., published in 1865. Because the insane victims of our county poor-house could be supported for \$1.75 per week each, instead of \$5 a week at a State institution, they were permitted, year after year, to suffer on in increased mental and bodily misery. In a well-regulated State institution eighty per cent of those confined recover, but in a county poor-house not twenty in a hundred ever recover. It is not for your committee to say what human life is worth—but old or young, human

life is the gift of God, and it is worth something. In the development of a State it bears a money value as well as a human soul. Men like Dr. Alexander H. Stevens and Horace Mann, each philanthropists and political economists, declare that a human life is worth to the State \$150 a year, and that to save even eighty per cent of the insane poor for a period of seventeen or eighteen years, which is the average duration of life, is equal to \$204,000 added to the property of the Commonwealth. Add to this the natural increase of population, and the saving in money becomes millions, and add to this again the blessings of a restored mind and reason to the possessor, and the value is beyond all the gold and silver of the earth.

Unless we mean to revive for the young that old Spartan code, which ordered by statute that every child who was maimed or weak should be put to death, or to maintain the modern practice of sacrificing old and young by a neglect which is of itself a crime, we must still open our hands and hearts for the relief of the destitute.

The proposition to tax the property of institutions founded to relieve the poor, and at the same to deny them all State aid, which is now before the Convention, seems to the undersigned a step toward the dark ages, and an act wholly repugnant to a Christian people and a free government. It would seem to be quite enough to deny all relief in money to the poor without taxing private benevolence for the very means raised and set apart for their support.

No petition has been presented to this body asking for a measure so harsh as this, nor for any change in the dispensation of State charities, except that they should not be sectarian in their character.

The committee have also recommended a provision for the establishment of charities. The laws of this State upon this subject, have been in a most uncertain and vacillating condition, and it has been thought proper to place its principal provisions beyond the reach of judicial inconsistency. The committee reserve to themselves, hereafter, a full exposition of the reasons which lead them to recommend the adoption of the second section. They have only to add, that while it is in contemplation to withdraw State aid from a large number of charities, the reasons for permitting private individuals freely to bestow their property for public purposes, have greatly increased in potency.

The last section of the article permits the Legislature to provide a secure mode of investment for the funds of charitable institutions, if their founders or trustees choose to avail themselves of it. It is believed that the provisions of this article will tend to increase and encourage private liberality, as donors will be relieved from the apprehension, in too many instances well founded, that their gifts will be squandered or misapplied,

ERASTUS BROOKS, *Chairman.*

T. W. DWIGHT,

SELAH B. STRONG,

GEORGE T. SPENCER,

CLINTON W. R. LUDINGTON,

FRANCIS SILVESTER.

Which was referred to the Committee of the Whole, and ordered to be printed.

Mr. E. BROOKS—I desire to state that these explanations are concurred in by all the members of the committee, and that the article itself is the report of the majority of the committee.

Mr. LIVINGSTON, from the same committee, presented a minority report.

The SECRETARY proceeded to read the report as follows:

The undersigned dissents from the article reported by the Committee on Charities, and begs leave to state his reasons therefor, as follows:

1. The undersigned proposes to limit the powers of the board of commissioners of charities, authorized by the report of the committee, to the public charitable institutions of the State, following in that respect the example of the Legislature of 1867, by which such a board has been established; and further, to leave the regulation of the powers and duties of such commissioners, and all matters relating to the mode of their appointment and the tenure of their office, to the Legislature, where, in his opinion, such subjects properly belong.

2. The undersigned is in favor of allowing any person to establish or increase the endowment of any institution not prohibited by law, requiring the Legislature to limit, by general laws only, the amount which a testator may devise or bequeath for such purposes.

3. The undersigned is opposed to granting to the proposed board the powers mentioned in the second section of the proposed article, and, in his opinion, the Legislature should provide by general laws for the disposition, under the sanction of the supreme court, of any funds or property which, by reason of a change of circumstances, can no longer be used for the purposes to which they may have been devoted.

4. But the principal ground of dissent on the part of the undersigned, arises from what he considers to be an unjust distribution made in the article reported by the committee, against religious and sectarian charitable institutions, and such who have a majority of their managers of one religious denomination. While the undersigned is of opinion that it would not be wise to prohibit the State forever, under all circumstances, from assisting charitable institutions, yet he does not hesitate to say that in his judgment it would be far better to close the door entirely against any aid from the State, to all institutions without exception, other than those exclusively owned and controlled by the State, than to open it to some, while excluding others on the mere ground that they are religious or sectarian, or that a majority of their managers are of one religious denomination.

In the opinion of the undersigned, there is but one safe rule to follow, and that is either to cut off entirely all State aid from institutions not owned exclusively by the State, or to throw the door wide open on equal terms to all.

All of which is respectfully submitted,

WALTER L. LIVINGSTON.

Which was referred to the Committee of the Whole, and ordered to be printed.

Mr. SPENCER—I desire to say a few words in the nature of a minority report. While I appreciate fully the necessity of a very careful and very liberal and systematic distribution of the charities of the State, and while I concur in the sentiments of the majority of the committee in regard to the importance of the subject, I am compelled to dissent from the conclusions at which they have arrived in recommending any provision at all for adoption in the Constitution, and for the reason that I believe the subject is wholly within the province and properly belongs to the Legislature, and not only that, but that it may be safely intrusted to the Legislature, and I am further confirmed in the conclusion at which I have arrived upon the subject, from the fact that, as I understand the article recommended by the majority of the committee, it proposes no more than to confer the power upon the Legislature to make specific provisions, which are provided for by the article, while the general grant of power to the Legislature embraces all that is specifically conferred by the article which is proposed. I ask leave, if I deem it advisable, to place on record, in writing, the substance of these reasons of my dissent.

The PRESIDENT—No objection being made, such leave is granted.

Mr. RUMSEY—I propose, with the consent of the gentlemen who form the majority of the Committee on Charities, that the report which they have made be submitted to the same Committee of the Whole having charge of the report on the Powers and Duties of the Legislature.

The PRESIDENT—That will be in order under the head of resolutions.

Mr. MORRIS—I offer a resolution.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That when the Convention adjourns this evening, after the evening session, it adjourns to meet on Monday evening at seven o'clock.

Mr. GERRY—I offer an amendment.

The SECRETARY proceeded to read the amendment as follows:

Strike out the words "evening session," and, insert in lieu thereof "morning session."

Mr. GERRY—My object in offering this amendment is, that if we adjourn after the morning session, many of the members will be able to reach their homes to-day, whereas if we wait till after the evening session, it will be too late, as the trains leave before then.

The question was put on the amendment of Mr. Gerry, and it was declared lost.

The question then recurred on the resolution of Mr. Morris.

Mr. ALVORD—On that resolution I call for the ayes and noes.

A sufficient number seconding the call the ayes and noes were ordered

The question was then put on the resolution of Mr. Morris, and it was declared lost by the following vote:

Ayes—Messrs. C. L. Allen, Barnard, Beadle, E. Brooks, J. Brooks, Cassidy, Cheritree, Chesebro, Cochran, Conger, Corbett, C. C. Dwight, Ferry, Garvin, Gerry, Goodrich, Gross, Hadley, Hardenburgh, Hatch, Hitchman, Kernan, Livingston, Mattice, More, Morris, Murphy, Nelson, Pierrepont, Pot-

ter, Robertson, L. W. Russell, Schell, Schumaker, Seymour, Sherman, M. I. Townsend, S. Townsend, Tucker, Van Cott, Wickham, Young—42.

Noes—Messrs. A. F. Allen, Alvord, Andrews, Axtell, Ballard, Barker, Barto, Beals, Bell, Bickford, Bowen, E. P. Brooks, E. A. Brown, Clarke, Clinton, Cooke, Curtis, T. W. Dwight, Eddy, Endress, Farnham, Field, Folger, Fowler, Francis, Fuller, Gould, Grant, Graves, Greeley, Hale, Hammond, Hitchcock, Houston, Ketcham, Kinney, Landon, A. Lawrence, M. H. Lawrence, Lee, McDonald, Merwin, Miller, Paige, A. J. Parker, Pond, President, Rathbun, Reynolds, Root, Roy, Rumsey, Schoonmaker, Seaver, Silvester, Sheldon, Smith, Spencer, Stratton, Van Campen, Verplanck, Wake-man, Wales, Williams—64.

Mr. ALVORD—I offer a resolution.

The SECRETARY proceeded to read the resolution as follows:

Resolved, That twice the usual number of the report of the Committee on Judiciary be printed for the use of the Convention.

Which was referred to the Committee on Printing.

Mr. BEADLE—I offer a resolution.

The SECRETARY proceeded to read the resolution as follows:

Resolved, That there be printed two thousand extra copies of the report of the Committee on Charities and the accompanying papers.

Which was referred to the Committee on Printing.

Mr. RUMSEY—I now move to refer the report of the Committee on Charities to the same committee having charge of the report on the powers and duties of the Legislature, and I do it for the purpose of having the question of charity, which comes up in those reports, considered together. I do not propose to discuss that question now. I propose to move a suspension of the consideration of that question until Mr. Burrill shall be here, and until that committee get ready to discuss it.

The PRESIDENT—The Chair does not feel warranted in entertaining the motion of the gentleman until the article is printed, as requested by the gentleman from Richmond [Mr. E. Brooks] this morning.

Mr. E. A. BROWN—I desire to ask leave of absence for next week. I am under the necessity of being at home to attend court.

The question was put on granting Mr. Brown leave of absence, and it was declared carried.

Mr. MERRILL—I now call for the consideration of the resolution offered by me yesterday.

The SECRETARY proceeded to read the resolution as follows:

Resolved, That debate on the report of the Committee on the Powers and Duties of the Legislature, except as otherwise referred, be limited to ten minutes to each speaker in Committee of the Whole, and to five minutes to each speaker in the Convention.

Mr. GERRY—When I made my motion yesterday to have the consideration of certain portions of this report postponed, and I referred to the motion of the gentleman from Wyoming [Mr. Merrill], it was immediately said

that that motion was not to be pressed. I do not myself see the object of the gentleman in pressing this gag law on the Convention at the present time. My objection is that it must necessarily cover some of those sections in regard to cities, because if it applies to the report as presented, it must cover every section of the report. The Convention have already, under the rule, the right, when the report is presented by the Committee of the Whole to the Convention, to move the previous question, either upon any section or upon the whole report, and I do not see any object in limiting debate in the Convention to five minutes when the operation of the previous question is to cut off debate altogether. I am opposed to this resolution and hope it will not prevail.

Mr. MERRILL—I said to the gentleman from New York [Mr. Gerry] merely that the resolution laid on the table for yesterday, and, if I recollect right, I said nothing about not calling it up this morning. My object in calling it up at this time is to give the Convention a chance to finish this article, or those portions of it not referred, this week. There seems to be a general understanding that the part referring to charities will be referred to the same Committee of the Whole which has charge of the report of the Committee on Finances. Our experience has hitherto been that the Saturday sessions are almost profitless for want of a quorum, and if anything is to be done toward getting through this report this week it must be done to-day; and unless some limitation is placed upon the debate we shall have a very poor chance of getting through. I do not regard it at all as a "gag rule." Gentlemen who cannot compress into ten minutes all that they have to say on a question of mere expediency, such as most of those sections involve, ought to have a gag rule imposed upon them, if the limitation I have proposed be such a rule, and it must be imposed if we are ever to get through with the deliberations of this body.

Mr. E. BROOKS—I sincerely hope the Convention will not adopt the resolution which has been submitted. There are some sections in the report now before the Convention of great importance to the interests of this State, and affecting its entire charities and entire taxing power. The great public charities, and institutions of learning, are now in danger. The report before us, I venture to say, is more important in some respects than any one which will be submitted during this Convention. I understand that the chairman of the Committee on the Powers and Duties of the Legislature is willing that these sections shall be postponed a day or two; but suppose you do postpone them, the moment you come to the discussion of this great question, you will be limited to a discussion of ten minutes. Ten minutes to do what? To see whether, in this Convention, it is right to impose a tax upon all the colleges of the State, upon all its hospitals, upon all its dispensaries, and upon all its orphan asylums.

Mr. RATHBUN—I simply wish to state, to the gentleman that we do not intend that that section in regard to the taxes shall be discussed until the report of the Committee on Finances relating to

that subject is brought up. We propose that shall go over and be considered in connection with the report of the Committee on Finances.

Mr. E. BROOKS—And that section on charities may go over also.

Mr. RATHBUN—Yes, sir.

Mr. GERRY—The difficulty is, the rule of the gentleman from Wyoming [Mr. Merrill], says, every section of this report, and, therefore, must apply to these sections whenever they are considered. If he is sincere in it, I would like to ask him to modify his resolution in such a way as it will not apply to such resolutions as shall be postponed by the action of the Committee of the Whole to the other committees. That will cover the objection made by the gentleman from Richmond [Mr. E. Brooks].

Mr. MERRILL—I will accept that modification.

The question was put on the resolution of Mr. Merrill, and it was declared carried.

Mr. KETCHAM—I offer a resolution.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That there be printed for the use of members, two thousand extra copies of the report of the Canal Investigating Committee of the Legislature.

Which was referred to the Committee on Printing.

Mr. T. W. DWIGHT—I offer a resolution.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That two hundred copies of the "Council of Revision" be taken for the use of the members of the Convention, and that the subject be referred to the Committee on Printing.

The PRESIDENT—The Chair will inform the gentleman from Oneida [Mr. T. W. Dwight] that this is in contravention of the standing rule. It must go to the Committee on Contingent Expenses.

Mr. T. W. DWIGHT—I would like to say a word in regard to this resolution, and a single word in explanation of the Council of Revision. It will be remembered that under the Constitution of 1777 the Council of Revision had control of the vetoes of laws. Their vetoes were prepared with very great care, and were preserved in manuscript copies in the State library. They contain discussions of many important points of constitutional law, many of the points which are to come before us in the progress of our future discussions, especially upon the judiciary and the control and government of cities. This work to which I have called attention contains an historical account of the judiciary from the earliest period of our colonial history to the present time, which I think, on careful examination, will be found of great service to the members of this Convention in discussing the important topics which will come before them.

Mr. WILLIAMS—I call for the consideration of the resolution I introduced on the 22d.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That after this week the daily sessions of the Convention shall commence at 9 o'clock A. M., except on Monday.

Mr. SEYMOUR—I move that the resolution be laid on the table.

The question was then put on the motion of Mr. Seymour, and it was declared lost.

Mr. GERRY—I call for a count.

Mr. E. BROOKS—I wish to amend that resolution.

The SECRETARY proceeded to read the amendment, as follows:

Resolved, That after this week the daily sessions of the Convention, except on Monday, shall commence at 9 o'clock A. M., and that a recess be taken each day from 2 o'clock P. M. until 4 o'clock P. M., and at 4 o'clock the Convention shall re-assemble and adjourn at 7 o'clock in the evening.

Mr. SEYMOUR—A count was called for on the motion I made to lay on the table, and that was not disposed of.

The PRESIDENT announced that the question would be again put on the motion of Mr. Seymour.

Mr. RATHBUN—I hope the gentleman from Richmond [Mr. E. Brooks] will omit the latter part of his resolution, to adjourn at 7 o'clock, and let the Convention adjourn at such time as it chooses.

Mr. E. BROOKS—I will omit that part of it.

Mr. ALVORD—I have the honor to be on one committee which must meet one day next week, if not twice. I would like to know if the proposition of the gentleman from Richmond [Mr. E. Brooks] is adopted, how we can meet? I trust, for the present, at least, this resolution will not prevail. I move, sir, again, that it do for the present, with the amendments, lie on the table.

The question was put on the motion of Mr. Alvord, and it was declared lost.

Mr. CONGER—I move to amend it so that it will apply to the week after next.

The SECRETARY proceeded to read the amendment of Mr. Conger as follows:

Insert the words "after next week" in lieu of the words "after this week."

Mr. CONGER—I wish to state very briefly my reasons for offering this amendment. The Committee on Education and the Committee on Prisons and the Prevention and Punishment of Crime have not concluded their deliberations, and as I belong to those committees, I may say for them as well as myself that the effect of this resolution, if adopted, would be to oblige all the members of those committees either to suspend their deliberations in committee or to deprive themselves of the privilege and the duty of participating in the deliberations on the reports of the Finance and Canal Committees next week. Therefore, I think that the original section would be an injustice to us and to the other committees who have not yet finished their work. There is no necessity for this haste in the matter. I, therefore, move that the motion be amended so as to apply to the week after next.

Mr. GERRY—I move to postpone the consideration of this subject indefinitely, and upon that I call the ayes and noes.

Not a sufficient number seconding the call, the ayes and noes were not ordered.

The question was put on the motion of Mr. Gerry, and it was declared lost.

The question was then put on the motion of Mr. Conger, and it was declared lost.

The PRESIDENT then proceeded to put the question on the amendment offered by Mr. E. Brooks.

Mr. A. J. PARKER—I wish to amend the amendment of Mr. E. Brooks by substituting the words "ten o'clock" for the words "nine o'clock."

Mr. E. BROOKS—I accept it.

Mr. CHESEBRO—I now move that this resolution shall not take effect until Thursday next.

The question was put on the motion of Mr. Chesebro and it was declared lost.

Mr. WALES—I offer an amendment.

The SECRETARY proceeded to read the amendment as follows:

Amend the amendment by substituting the words "nine o'clock" for the words "ten o'clock."

The question was put on the amendment of Mr. Wales, and it was declared carried.

The question then recurred on the amendment of Mr. E. Brooks.

Mr. FIELD—I call for a division of the question, first on the morning session, next on the afternoon session.

The question was put on the first part of the amendment of Mr. E. Brooks, and it was declared carried.

The question was then put on the remaining portion of the amendment of Mr. E. Brooks, and it was declared carried.

The question was put on the original resolution as amended, and it was declared carried.

The Convention resolved itself into Committee of the Whole on the report of the Committee on the Powers and Duties of the Legislature, Mr. BARKER, of Chautauqua, in the chair.

The SECRETARY proceeded to read section nine as follows:

SEC. 9. The Legislature shall not appropriate, lend or give any of the money or property of the State to or for any charitable institution, purpose or object, except such as have been or shall be established by and be owned and controlled solely by the State, except the following: the New York institution for the blind; the New York State institution for the blind; the society for the reformation of juvenile delinquents in New York; the New York institution for the deaf and dumb.

Mr. E. BROOKS—I understand that this section will be passed over.

Mr. RATHBUN—I hope this will be passed over.

There being no objection the section was passed, and the SECRETARY proceeded to read the tenth section as follows:

SEC. 10. The Legislature shall not give, lend or appropriate any of the money of the State in any manner to or for the use of any person, body of persons, association or corporation, except such appropriations as are allowed by sections — of this article.

Mr. MILLER—I move to strike out this section of the article.

Mr. E. BROOKS—I rise to a point of order, that by a resolution of the Convention, this is one of the sections which have been referred to

another Committee of the Whole; or at least it has been done by common consent.

The CHAIRMAN—There has been one vote upon that, as the Chair understands.

Mr. MERRILL—I move that this section be referred to the same Committee of the Whole, having charge of the report of the Committee on Charities.

Mr. MILLER—If this could be passed over, I would consent to it. It strikes me, that part of the subject-matter of this section relates to giving aid to railroads and for such purposes.

Mr. RATHBUN—That is the object of it.

Mr. MILLER—I suppose it could be better considered, when we had the article reported by the Committee on Finance under consideration. I prefer it should go over until the consideration of that report.

Mr. RATHBUN—I hope it will go in the direction indicated, so that it will be considered either in connection with the report of the Committee on Charities or the Committee on Finances.

Mr. MILLER—I wish to say one word in reference to why I wish this to be considered in connection with the article reported by the Committee on Finances. We shall probably understand what is the disposition of this Convention when that report is considered, in relation to entering upon any new expenditure on the part of the State. If this Convention shall decide, on account of the great burdens pressing upon our people at this time, that we ought not to enter upon any new scheme of expenditure, and shall devote all our resources for the next twenty years, to the payment of the debts of the State, why then the people of all sections of the State will at least submit cheerfully to such a disposition of the question. But if it shall be decided when that question comes up, that we are to enter upon some scheme of expenditure that will confer benefits on a portion of the State, while the door is firmly bolted and closed against other and larger portions of the State, it may make a very great difference as to the action and as to the vote of the members of this Convention. I do not wish to discuss the main question now; but, sir, I think it can be shown when that question comes up, if this State is to enter upon any scheme for developing its resources, that there never has been a plan so economical, so cheap, and one which has brought so large returns to this State for the money invested, as the plan for aiding railroads by giving the State aid, and thus developing the resources of the State. I think this proposition ought to go over, until we can know what disposition is to be made of certain other questions.

Mr. CHESEBRO—I find by reference to the report of the Committee on Finances, which is made the special order on Tuesday, that it contains a similar provision to this, and I raise the point of order, that we cannot discuss this section in this committee.

The CHAIRMAN—The Chair thinks the point of order not well taken. The Convention have referred this matter to this Committee to be considered.

Mr. RATHBUN—I hope this section will be

passed over, so it may be considered with the report of the Committee on Finance.

Mr. MATTICE—I move to amend the motion of the gentleman from Delaware [Mr. Merrill] so as to include the following section.

Mr. WICKHAM—The section to which the gentleman refers is the identical section adopted by the Convention in the report of the Committee on Towns and Villages.

Mr. RATHBUN—The section referred to by the gentleman from Greene [Mr. Mattice] is simply the section of the present Constitution with hardly a word of alteration in it. I hope we shall keep that if we do nothing else.

Mr. KINNEY—I rise to a point of order, that the Committee of the Whole cannot refer a section to another committee. It is not in their province to give direction to send any section to another committee. It can pass over the section.

The CHAIRMAN—The Chair holds that the point of order is well taken.

Mr. KERNAN—I move to pass over the present consideration of this section.

Mr. RUMSEY—I wish to call the attention of the Chair to a resolution, which was passed by the Convention, authorizing Committees of the Whole to suspend the consideration of any article; therefore, I think the motion of the gentleman from Greene [Mr. Mattice] was in order.

Mr. KERNAN—That is the motion I have made and I suppose it is in order for the committee to pass over the consideration of any section for the present.

Mr. ROBERTSON—I move, as a substitute for that motion, that this committee report the section to the Convention and ask to be discharged from its further consideration and recommend that it should be referred to the same committee having charge of the report of the Committee on Finances. Otherwise it will be retained in two Committees of the Whole; and if the other committee get control of the business, it will take it from us. We might as well now be discharged from the consideration of this subject, which appears to extend over a very wide field, including facts discussed by the Committee on Charities as well as those discussed by the Committee on Finances. I think we need not further retain it in our possession.

Mr. KERNAN—If the gentleman will allow me a moment. I think there is no need to lose so much time. If we pass this over we can go through the article, before we report it to the Convention, and when we do so there can be a motion made that the committee be discharged from further consideration of this section, and that it be referred to another committee. If we do not get through with the article and ask leave to sit again, the motion can then be made to have this section referred and it will save time, which would be wasted in doing this now.

Mr. ROBERTSON—Under those suggestions I will withdraw my motion.

The question was then put on the motion of Mr. Kernan, and it was declared carried.

The SECRETARY proceeded to read the next section, as follows:

SEC. —. The credit of the State shall not in

any manner, nor for any purpose be given or lent to any person, body of persons, association or corporation, nor shall the State take or be interested in any stock of any company or corporation except in payment of or as security for a debt previously due the State.

Mr. MATTICE—I move to pass over that section.

Mr. RATHBUN—That the committee may see that this is no new thing, I will read article 7, section 9, of the Constitution of 1846:

"Sec. 9. The credit of the State shall not, in any manner, be given or loaned to or in aid of any individual association or corporation."

All there is of that, is that the State shall not take stock in payment of a debt. I submit this has nothing to do with the question of finance at all, nor with the question of charities at all. This is an independent proposition contained in the original Constitution, with the addition, in regard to receiving stocks of corporations. It does not interfere with anybody's report, as I understand, and therefore, I hope the committee will not pass it.

Mr. ANDREWS—I think this matter of the consideration of the question of how the money and property of the State shall be disposed, is properly within the purview of the Committee on Finances, therefore, I think, and I suggest it properly should take that course.

Mr. ROBERTSON—It seems to me it would not be a proper subject for the Committee of Finance, although that may be one of the elements which may enter into their consideration, whether or not the State shall dispose of the money raised by taxation, in the way forbidden by this section. Yet I apprehend there are considerations of more vital consequence, involved in the questions of finance. Even if that should be one of the considerations, and the Committee of the Whole on the report of the Committee on Finance and they may dispose of this question, yet I think the Committee on Revision would finally be compelled to restore these sections, which contain this prohibition and limitation upon the power of the Legislature, to this article, and not leave it in the article which relates to the finances of the State. It is not in reference merely, to any amount of money which the State shall raise, or the means by which it shall be raised, or the purposes to which it shall be appropriated; but a question striking vitally at what we consider the purity and simplicity of the government of the State in the Legislature, and, therefore, I apprehend that this article on the powers and duties of the Legislature, the object of which is to keep that power in its proper channels, is the place where this section properly belongs, and it should be considered and disposed of by this committee.

Mr. OPDYKE—I am constrained to differ from the gentleman from New York [Mr. Robertson]. It seems to me this is specifically a financial question. It relates to the disposition of the credit, the property or money of the State, or loaning it to corporations or individuals. That cannot be done without creating a public debt, and the subject of the public debt you have referred to the Finance Committee. That committee has reported on this identical subject, and it seems to me that

is the proper committee to refer this subject to, because, in addition to taking cognizance of all that relates to the finances of the State, it has this further question referred to it, namely, what are the appropriate limitations of legislative power in reference thereto. So it appears to me it comes strictly within the province and purview of the authority given to the Finance Committee. I hope, therefore, that this section will now be passed over and its consideration left to the committee to which the report of the Finance Committee has been referred.

Mr. GRANT—This Convention has to consider the question whether this State shall in future give any aid to railroad enterprises. It is difficult for me to see why the consideration of that question is not intimately connected with the consideration of this question. It is difficult to separate the two. I think it is eminently proper that the consideration of this section should pass with the preceding section to the Committee of the Whole at the same time with the consideration of the questions reported upon by the Committee on Finances. It is a question, undoubtedly, by its terms, designed to limit the State in its action of aiding new railroad enterprises. In that view I hope the consideration of it will be had at the same time with the report of the Committee on Finances.

Mr. RATHBUN—There was a committee appointed at the commencement of the session of this Convention entitled, the Committee on the Powers and Duties of the Legislature, and another entitled, the Committee on the Legislature, its Organization, etc. The subjects referred to these committees should all have gone to one committee. I suggested this at that time, and stated that was taking two bites at a cherry. I have the honor of being on the Committee on the Powers and Duties of the Legislature, and that committee have been hunting around a long time to find out what was referred to it, and where its half of the cherry was. We found some things about which we had no doubt, but other committees have reported upon those subjects. In some cases, what was prepared in our report, has been moved by way of amendment, and have generally been adopted, when the other was not acceptable to the committee. Here, however, we have a prohibitory clause, as in the old Constitution, which limits the power of the Legislature in regard to loaning the credit of the State for certain purposes. The committee really believed, when they came across that prohibitory clause, limiting the power of the Legislature, that it was one of the things certainly marked out for their consideration. In the simplicity of their hearts they picked it up and said, "This is ours." I had sometimes a little doubt about it myself, but I always yield to the majority. The committee accepted, it for a part of their stock in the business of this Convention, and they have reported it with an amendment, or addition, which they ask the committee and the Convention to adopt. If that does not belong to the Committee on the Powers and Duties of the Legislature, then, sir, we are bankrupt; we have nothing at all. It is said that the Committee on Finances have reported precisely

the same thing. Well, if they have, it only shows that fifteen men on one committee and seven on another have agreed on what they have done. They have limited the power of the Legislature, so that they cannot expend the money, nor pledge the credit of the State in a certain direction. It seems to me, sir, there ought not to be any fault found where there is a unanimous approval on the part of these two committees. The committee I have referred to, on the Powers and Duties of the Legislature, have reported *limiting* the power of the Legislature. Does anybody say that does not belong to them? If that does not, then they have got nothing. I have no objection to that if the Convention say so. But I ask gentlemen to meet this question here. It is not a new question; it has had twenty years run, and I believe nobody objects that it ought not to be there, where it is, and I doubt very much if there are many who object to its being extended a little further, as the committee have extended it. I hope it may be passed upon and disposed of. I do not see any propriety in waiting for the discussion of the report of the Committee on Finances, because, if there is a concurrence of opinion, of course there can be no objection to it. If there was a non-concurrence, I should say very well, then it might be better to let these two reports come together and be discussed together. But if any gentleman can tell me why this should be postponed to wait for the discussion on the report of the Committee on Finances, when it agrees exactly with that report, I shall be pleased to be informed of his reason.

Mr. VERPLANCK—It is extremely desirable that this report should be disposed of in Committee of the Whole this week, and I doubt whether we shall have a quorum after this session. It is now twelve o'clock and as we have but two hours for the consideration of this report in committee, I suggest whether it is not best to pass the sections about which there is dispute, and go on with the others. The section establishing a court of claims is a very important one to be considered by the committee. With a view of reaching something upon which we may act, I hope the motion may prevail.

Mr. McDONALD—With regard to this question of the court of claims, I understand, that is now being considered by the Committee on Finance, who have not yet made their report upon it. Thus you may go through with all the powers and duties of the Legislature; many of the provisions are being considered by two or more special committees. How stands it with regard to the provision which is now under consideration? The Committee of the Whole have to consider it; it is the same body it will be when the report of the Committee on Finance comes up. We have the report from all the committees on this subject, and thus have all the information we expect to have. We have the time to consider it, and why should we not? With regard to the provision as to the court of claims we have not all the information we shall have. We should have the report of the Committee on Finance on this subject before we consider that. It is very important we should have it. Let us have all the light we

can get. But having all the light we can get on this subject, if it is in its proper place, and properly here, why should we not consider it here? I believe in doing to-day what is properly before us and not put it off until to-morrow, unless there is some good reason for it. While we might consider it under the question of finance, that is no reason why we may not as well consider it now. When we reach the question of finance, there will be quite enough in that report, before this body, for its full consideration, and it seems to me, now is the time to consider this, entirely untrammelled by any other question. Give it a fair hearing and decide it fairly. I hope it will not be postponed.

Mr. SHERMAN—As this question has been sufficiently discussed, I rise to a point of order, that it is not debatable, as it relates to a priority of business.

The question was put on the motion of Mr. Mattice, to pass over the section, and it was declared carried.

The SECRETARY proceeded to read the next section, as follows:

SEC. —. The Legislature shall pass no law authorizing any county, town, city, village, or other municipal corporation, to give or appropriate any money or property, or to lend its credit in any way in aid of, or to any private person, company or corporation, or take or be interested in any stock therein.

Mr. RUMSEY—This section seems to be identical with one already reported and agreed to, therefore I move it be passed over.

There being no objection, the section was passed over.

The SECRETARY proceeded to read the next section, as follows:

SEC. —. The Legislature shall not audit or allow any private claim or account against the State, or pass any special law in relation thereto, except to appropriate money to pay such claims as shall have been audited and allowed according to law.

Mr. OPDYKE—I move that this and the three following sections be passed over. They all relate to the establishment of the court of claims, a subject the Finance Committee considered as having been referred to them, and they so stated in the partial report made to this Convention, and asked leave to report on this subject. This subject they now have under consideration, and will be prepared to report upon it at an early day. I hope, therefore, this committee will postpone the consideration of the matter until the Finance Committee are ready to report.

The question was put on the motion of Mr. Opdyke, and was declared carried.

Mr. SCHELL—I move to strike out, in the fourth line, the words "audited and allowed," and insert "adjudicated." The committee will perceive the phraseology of the sentence is, that the Legislature shall not audit or allow any private claim or account against the State. The subsequent part of the article provides for an adjudication of claims. If the Legislature cannot audit and allow, they cannot have the power to pay any claims which shall have been audited and allowed according to law; there cannot be any way in which they can be audited

or allowed, if the Legislature has no power to provide for their being audited and allowed.

Mr. RUMSEY—I imagine the gentleman from New York does not apprehend the reason of this. There are a large amount of claims which, according to law, can be audited by the officers who pay them; a large portion of claims are audited by the canal board, and other State officers who are charged with that duty, and they are to be paid by appropriations made by the Legislature. There is another large proportion of claims, and provision is made in a subsequent section for having them adjudicated by the court of claims; when thus adjudicated they are allowed according to law, and that provides for that class of claims. So the language in this section, I apprehend, is directly appropriate for the purposes for which it is intended.

Mr. CONGER—I think the language adopted by the committee is correct. I think the gentleman from New York [Mr. Schell] will see that the phrase in the latter part of the section, which he seeks to amend in the exceptive clause, only applies to the passage of any special law. Take the section, divided into its main parts, and you have, first, "The Legislature shall not audit or allow any private claim or account against the State." The second part is, that the Legislature shall not "pass any special law in relation thereto, except to appropriate money to pay such claims as shall have been audited and allowed according to law." If the latter exceptive clause applied to both inhibitions of legislative act, or power, then the criticism of the gentleman from New York would be correct.

Mr. BALLARD—The first part of the section prohibits the Legislature from auditing or allowing any private claim—in the latter part comes the exception. It seems to me if the word "otherwise" were interposed in the last line, so as to read "to pay such claims as shall have been otherwise audited and allowed according to law," it would obviate all objection. So that when these claims had been audited and allowed by any other tribunal, then the Legislature may pay them. As it stands, the last line seems to contradict the first. I move that the word "otherwise" be inserted after the words "shall have been."

Mr. RATHBUN—I think the gentleman from Cortland [Mr. Ballard] is mistaken, and the word he proposes to insert is entirely unnecessary. In the first place, the section prohibits the Legislature from auditing or allowing any private claim; they cannot do it. And they shall pass no special law for such a purpose. That excludes all action by the Legislature upon the subject. But they may appropriate the money to pay claims when they have been audited or allowed according to law. Not by the Legislature, but by a body legally authorized to perform that duty, and when that body, according to law, audits and allows an account, then the Legislature may appropriate the money to pay it. That is all they have to do with it. Therefore, the word "otherwise" would be entirely improper, because nobody else, except the body legally authorized to do it, can do it at all.

Mr. BALLARD—I agree with the committee in the object sought to be attained. But it seems

to me, by interposing the word "otherwise," there will be no doubt about it. When a claim came before the Legislature, they could not pay any money except it was audited by some other body than the Legislature—by the canal board or by the courts.

Mr. SCHELL—I will accept the amendment of the gentleman from Cortland [Mr. Ballard].

Mr. COOKE—I do not think the word "otherwise," in the last line, as suggested by the gentleman from Cortland [Mr. Ballard], is appropriate. It seems to me it would make an awkward sentence, utterly meaningless, and should not be inserted in the section. I think the section is perfect in its present form: "The Legislature shall not audit or allow any private claim or account against the State." Then it provides, in effect, that they may appropriate money to pay such claims as shall have been audited and allowed according to law. The Legislature cannot audit and allow, and they cannot appropriate any money to pay any claim that has not been audited and allowed. And then comes the next sentence, providing for the auditing and allowing of claims. I think it is preferable in its present form. Perhaps the word "audit" in the fourth line is not the appropriate legal term in reference to the adjudication of the court of claims. There might be a criticism upon that word, but it is in nowise remedied by the word "otherwise." I think it would be far better to strike out the word "audit" and insert "adjudicate."

Mr. RATHBUN—The word "audit" covers other cases than those provided for by the court of claims.

Mr. COOKE—I inferred so from reading it, without a particular examination of the other provisions.

Mr. SCHELL—I will withdraw my amendment.

Mr. RATHBUN—The word "allowed" will cover all those other adjudications after they have passed an examination.

Mr. COOKE—In my judgment, the section cannot be improved by either of those words.

Mr. BELL—I have come to nearly the same conclusion as the gentleman from Ulster [Mr. Cooke], that the section is substantially correct as it is reported in the article under consideration. I can see the propriety of using the words "audited and allowed." There is not a session of the Legislature but numerous claims composed of numerous items, come before the Committee of Ways and Means and the Committee on Finance, to be audited and allowed. This prohibition is important, as it shuts out that class of claims and refers them to some permanent and responsible body. I would retain the words "audit and allowed" in the fourth line inasmuch as it is inserted in the first line and makes it uniform and definite. I would suggest to the gentleman from Cayuga [Mr. Rathbun], for his consideration, if the following language would not express the idea more clearly; "the Legislature shall not audit or allow any private claim or account against the State, or pass any special law in relation thereto, but they may appropriate money to pay such claims as have been audited and allowed according to law," using the words "but may" instead of "ex-

cept to." That I think would express the meaning more clearly and more definitely.

Mr. RATHBUN—It would not change the effect of it. The word "except" prohibits anything by the Legislature except one thing, the appropriating of money to pay such claims as shall have been adjudicated or allowed. That is all it is used for, that is the exception; the other is total prohibition. The exception gives the right to appropriate money to pay the claims that have been audited.

Mr. BELL—The word "to," it seems to me, is indefinite in that connection. It would mean a continuation of the same subject mentioned in the previous paragraph or member of the sentence. I would move, if the gentleman does not accept it, to amend by striking out the words "except to," and inserting the words "but may," in order to get rid of these words "except to," which have not an appropriate meaning in that connection. The other amendment I would keep substantially as it is.

Mr. RUMSEY—The word "except" was inserted simply for the reason that if there was but one appropriation contained in the law, it would be rather a special law to appropriate money for a special purpose. That is the reason that the word is used. It does not change the sense at all. It may prevent them from passing a special law in a special case.

Mr. BALLARD—From the discussion we have had, I am satisfied my amendment is not necessary. I therefore withdraw it.

The CHAIRMAN—It has been accepted by the mover.

Mr. FULLER—I rise to a point of order. Mr. Schell has withdrawn his amendment.

The CHAIRMAN—The pending question is on the amendment of Mr. Bell.

Mr. OPDYKE—I hope that the amendment will be adopted. There can be no doubt of the greater propriety of the phraseology of the amendment of the gentleman from Jefferson [Mr. Bell].

Mr. ANDREWS—We are in entire ignorance of what the amendment is.

Mr. OPDYKE—I hold there is this important difference in the import of the two terms. The provision of a portion of this section consists in a prohibition of the Legislature in the exercise of certain defined powers. Then the word "except" comes in, which would imply that there is one class of those powers reserved to the Legislature. This is not intended. The object of the additional clause is to confer on the Legislature a power of a different kind. Therefore the word "but" is the proper word. It makes the intention more definite and more explicit, and thus precludes the possibility of its being misunderstood.

Mr. COOKE—I rise to a point of order, that there is no question before the committee. The gentleman from New York [Mr. Schell] offered an amendment to which the gentleman from Cortland [Mr. Ballard] offered a further amendment, which was accepted by the gentleman from New York [Mr. Schell], to which amendment the gentleman from Jefferson [Mr. Bell] offered another, and then the mover of the original amendment withdrew his, which carries with it all those predicated upon it.

The CHAIRMAN—The Chair holds that the amendment offered by the gentleman from Jefferson [Mr. Bell] was distinct, and is before the committee.

The question was put on the amendment of Mr. Bell, and it was declared carried.

Mr. MURPHY—I would like to ask the Chairman of the committee, if I can get his ear for a moment, what he proposes to do with private claims against the State which may not be embraced in those authorized to be audited by general law. There may be cases of just claims against the State which may not be embraced in the general laws authorizing this court of claims. My question is, what is to become of such claims against the State under this provision if no special laws shall be passed in relation to them?

Mr. RATHBUN—My answer to the gentleman is that it seems to me there can be no difficulty whatever in the Legislature passing a general law by which every man having a claim against the State is entitled to go before the court of claims and have it tried, because they might enact a law that all claims of individuals—private claims—shall be tried in this court of claims, making the law so broad that there can be no pretense of any claim, no matter how it originated, that that court of claims would not have jurisdiction over it.

Mr. MURPHY—Then it comes to the point to which I wish to bring the minds of this committee. We should provide in the section that all claims against the State shall be referred to the court of claims.

Mr. RUMSEY—If the Legislature, upon passing a general law referring all private claims, should omit to provide for a private claim, it would be quite as easy for the Legislature to amend that general law and send that claim with others to the court of claims, as it would be for them to attempt to adjudicate upon or pass it. They could remedy the evil by sending that particular case to the court of claims by an amendment to the general law.

Mr. RATHBUN—I believe I am safe in saying that there are claims arising in the progress of the affairs of government, which may be settled and arranged by certain officers of the State, and well adjusted by them—matters arising upon contracts, for instance, and the payment of balances due in the construction and enlargement of canals and other public works, where parties are entitled to be paid by contract—the amounts in dispute could be ascertained, agreed upon, and settled by a person authorized for this special purpose, and they are entitled to be paid without going before the court of claims, because their demand has been properly audited by a person authorized by law to do so. They are not compelled to go to trial, but go directly to the auditor and ask for the pay by an appropriation of the Legislature.

Mr. MURPHY—I would say in reference to the remarks of the gentleman from Steuben [Mr. Rumsey], that his answer is in opposition to his report, which seeks to restrain legislation. As I understand him, whenever there may be a particular claim against the State, and it is not included in the general law, the Legislature may pass an

amendatory act to that law, making a new class, which may include this particular case.

Mr. RUMSEY—Or this particular class.

Mr. MURPHY—Well, or this particular class. But they are to legislate every time practically upon a private claim, thus inducing the very legislation which it is sought to avoid.

Mr. RATHBUN—I had supposed that my answer was sufficient. It was that there are certain claims where persons are entitled to be paid without going to this court. If we had settled that all private claims against the State should be brought to the court of claims, we would force these persons, who are clearly entitled to be paid, who have a right to be paid by persons who are authorized to audit and settle those accounts, to go to this court and have their claims allowed. It is simply for that reason that we put in the word "audit," and omit the word "all."

Mr. MURPHY—I understood the gentleman before, and I understand him now. I suppose the intention of this article is that all controverted claims whatever against the State shall be referred to the court of claims. Why not then say so directly, and dispense with all this legislation which will be necessary in amending the general law.

Mr. BICKFORD—I rise to a point of order. There is no question pending before this committee, no amendment offered, no motion pending, nothing of that kind on which discussion can be had.

The CHAIRMAN—The question is upon the section.

Mr. RUMSEY—This section provides that the Legislature shall not pass any law relative to private claims or accounts against the State. The next section contains provision for creating a court of claims, and that the Legislature shall pass laws referring all such claims to that court. That provision covers every imaginable case. The same section provides that in such court shall be adjudicated all such claims against the State, as the Legislature shall from time to time, by general laws, direct. You may alter that so as to send there every private claim and account against the State, but such provision would be unnecessary and improper, for it would embrace every account for expenditure of moneys to be made in the ordinary administration of the government. These are provided for by the general appropriation bills, and are not the subject of any controversy. They ought not to be sent before such court.

Mr. MURPHY—Every controverted claim, as the practice has been and must be, whatever may be its character, whether there is any real foundation for it or not, now goes to the Legislature. If it is something which the auditing officers of the State cannot allow, or are not authorized to allow, and the claimant appeals to the Legislature, why not by a general provision declare at once that all such claims shall be referred to the court of claims? Instead of doing so, this article provides that the Legislature shall, by a general law, direct what claims may be sent to the court of claims; and then in the section under consideration further declares that the Legislature shall pass no special act in relation to claims. Now, as I said when I first

rose, in the query I proposed to the committee, there may be just claims that would not be included in the general law, and would not be heard unless by an amendment of the general law to take in this special claim. It appears to me, as I said before, that this would produce the very evil which is sought by the general principles of this article to avoid—that is, multiplicity of legislation. We will have laws to meet special classes of cases passed every year, just as we have seen take place in reference to all general laws which the Legislature have heretofore enacted from time to time. Every year the Legislature is burdened with amendments to the general law, intended to bring in special cases, thus producing that mass of legislation which has of late years proved so hard upon the Legislature, and which has excited so much disgust in the community. I will say in this connection that the Constitution of 1846, in seeking to abridge legislation, has really had the tendency to increase it. One great feature in that instrument was to give equal rights, as it was termed, to all citizens of this State in regard to what was previously considered monopolies. I mean corporations for different purposes. It was contended that every citizen should have an equal right to participate in these privileges in the law, and provisions were adopted by which general laws were required to be passed by the Legislature for the purpose of creating corporations. Those general laws have been passed, and it has multiplied, manifold, the previous legislation. Every corporation of any importance came to the Legislature for some amendment to the general law which shall include its particular wants, and the general laws were amended accordingly. We may avoid this difficulty in the present case by saying at once that all controverted claims against the State shall be referred to a court of claims. I commend such a provision to the consideration of the committee, as I wish to co-operate with them in the end they have in view. I would, therefore, amend the section so as to say that all controverted claims against the State shall be referred to the court of claims. Then we shall have no general laws to pass by the Legislature, except to direct the manner in which the court of claims shall be organized.

Mr. BECKWITH—I think I can make a suggestion which will aid the gentlemen in removing the objections they have raised, by striking out in the fifth and sixth lines of the next section the words "the Legislature shall, from time to time, by a general law, direct," and then striking out the word "such" in the fourth line, and insert "controverted claims." Then it will be, "in which court shall be adjudicated controverted claims against the State." I think that will remedy the evil of which gentlemen have spoken.

Mr. MURPHY—I agree with the suggestion, and I think it will obviate the objection. I hope it will pass.

There being no further amendments, the SECRETARY proceeded to read the next section, as follows:

SEC. 13. The Legislature shall provide by law for creating a court of claims, to consist of three judges, to be appointed on the nomination of the Governor,

by and with the advice and consent of the Senate, in which court shall be adjudicated all such claims against the State as the Legislature shall, from time to time, by general laws, direct. Such claims shall be tried without a jury. In all cases where such claims shall amount to five hundred dollars or more, and be for the value of or damages to real estate, the judges of said court shall, and in all other cases may, view the property in question, and in deciding thereon shall consider their own estimate of such value or damages in connection with the evidence in the case. In all other respects such court shall be governed in its adjudications by the legal rules which have heretofore existed between the State and its citizens, according to the course and practice of the common law as modified by the statutes of this State.

Mr. RUMSEY—In printing this section there has been a mistake. The next section belongs to the one that has just been read, and should be read with it.

The SECRETARY proceeded to read the next section, as part of the previous section:

The statute of limitations shall prevail in favor of the State the same as in favor of individuals. The decisions of such court may be reviewed on the law on appeal to the court of appeals. The judges of said court shall hold their offices for the term of five years, unless sooner removed according to law.

Mr. BECKWITH—I move to amend this section by striking out the word "such" in the fourth line, and insert the word "controverted;" and then strike out in the fifth and sixth lines the words "as the Legislature shall, from time to time, direct." That will leave all claims against the State to be adjudicated in this court.

Mr. BAKER—Who is to determine what are controverted claims?

Mr. BECKWITH—If they are not allowed by the officers they are controverted.

Mr. BAKER—They have got to come before some tribunal to ascertain whether they will be allowed.

Mr. ROBERTSON—I would ask whether it would not be better to express in plain terms the idea that all claims against the State, if not audited or allowed by the proper auditing officer, shall be regarded as controverted claims.

Mr. BECKWITH—I moved to strike out in the fourth and fifth lines, "as the Legislature shall, from time to time, by general laws, direct," and also the word "such." Then I think there will be a court before which all claims against the State can be brought for adjudication. So that all those claims which the State officers or auditing officers feel that they are not authorized to allow, can be brought into this court and there be heard. And if the decision be correct and the State and the party are both satisfied, then it is well, but if otherwise the dissatisfied party can go to the court of appeals for further review.

Mr. VERPLANCK—I offer the following amendment:

Insert after the word "jury," in line six, as follows:

"But the facts found by the court on the proof, shall be stated in each adjudication."

It will be observed that the section, as it now stands, proposes to dispense with a jury, so that the court are to find the facts. This amendment proposes that the court shall state the facts which they find in their report. This is fair to the people, and is necessary, if there is an appeal to the court of appeals, that the court may know what the court of claims has decided in the premises.

Mr. COOKE—I would inquire of the gentleman from Erie [Mr. Verplanck] if he should not specify the time within which an appeal should be taken? If we have got to constitute this court, and establish a practice for it, we may as well do it thoroughly, as to leave it half done. It seems to me, sir, that this section is sufficient for the purpose for which it is offered. The Legislature are to establish a court of claims; and it will not be effectually established unless some mode is provided by them for getting the facts of the case before the court of appeals. They are required to make some regulation by which the court of review can become possessed of the facts, in order to apply the law to the case. My objection to the amendment is, sir, that it is too legislative; that it is trenching upon ground properly belonging to the Legislature. That body must regulate the method of getting the facts before the court. The existing Constitution, in providing for a court of appeals, does not go on to specify what the practice shall be in order to get the case before the court of appeals. That is left, and wisely left, I think, to the Legislature. If we are to go so far, in laying out the practice of the court, it seems to me we had better abolish the Legislature, declare this Convention permanent, and go on and establish laws to govern the State.

Mr. E. P. BROOKS—I had hoped that some one of more experience in legislation than myself would call the attention of the committee to the fact that we are not acting in a legislative capacity. I suppose, sir, that the subject-matter under consideration is properly within the purview of the Legislature. I am not familiar with the manner in which private claim bills are passed by the Legislature, but I do know something of the mode in which they are tried by the board of canal appraisers, having occupied that position for upward of two years. Speaking with the experience I have had in that capacity, I can say that I believe no better plan can be adopted for determining that class of cases over which the canal appraisers have jurisdiction than that which now exists. But, sir, the Committee on Canals have reported an article to this Convention in which it is proposed to abolish the office of canal commissioner, and also the office of canal appraiser. If that article shall be adopted, then there will be no tribunal left before whom a large class of claims against the State can be heard. I suppose, sir, that it is intended that the court of claims provided for by this section, shall supply not only the place of the offices proposed to be abolished, but shall be invested with larger and additional powers. If so, I am decidedly in favor of the proposition. If such a tribunal can be created, I can imagine that the Legislature can very properly regulate its jurisdiction and mode of procedure. If this Convention shall not take from the Legis-

lature the power to act, I can suppose it probable that they will provide for the exercise of the power conferred upon this court of claims. They may provide the mode of appealing and limit the appeals from its decisions. They may provide by law that any citizen who alleges that he has a claim against the State shall, as a condition precedent to his prosecuting his claim before this court, first file a bond or undertaking with the Comptroller with sufficient sureties, conditioned that, in case he fail to recover an award, he will indemnify the State against loss, or the expenses of the investigation of the claim. Such a provision would work no hardship to an honest claimant, while it would discourage and deter sharpers and speculators from prosecuting fictitious claims. An honest claimant could go before the court, prove his demand and have it adjusted with comparatively little expense, while the dishonest one would have to pay the cost of the experiment in case he failed to obtain an award. I think the Legislature would make some such provision in case we do not legislate for them. If we are to have this court of unlimited jurisdiction over claims against the State, then the State should be protected against fictitious claims that otherwise might be improperly preferred. That could be readily done in the manner I have suggested, or in some other way. Still further, if we allow the Legislature discretion in the matter, they will regulate and prescribe the manner appeals shall be taken. They will not subject the citizen to injustice arising from either the caprice or ignorance of this court, without affording him adequate redress in having the decision, like the decisions of other inferior courts, reviewed. The opinion of the court of appeals could be taken in a similar manner provided for between individual litigants. It would be competent for the Legislature to limit and restrict the right of appeal both in respect to the character of the claim and the amount involved. For example, they might provide that appeals should not be allowed in cases where the claim proved was less than \$500 or \$1,000. On the other hand, it could be provided that an appeal could be taken by the Attorney-General, on behalf of the State, in cases where a justice of the supreme court should certify his opinion that it was a proper case in which the opinion of the court of appeals should be obtained. Thus it will be seen that the Legislature could readily guard the rights of the citizen on the one hand, while on the other they could protect the State against the caprice or ill-advised action of the Attorney-General. I have made these suggestions with a view of showing that all matters of detail connected with the organization of this court may be properly left with the Legislature. I will take occasion to express my entire concurrence with the committee who reported this article, on the proposition to create a tribunal that shall have exclusive jurisdiction over the matter of private claims against the State. I think the proposition a good one—indeed, of as much value as any that has been contributed to the proposed Constitution. It takes away, as the gentleman from Kings [Mr. Murphy] has justly said, from the Legislature the anomaly of acting, in many cases, in a judicial capacity. Heretofore

claims against the State have been presented to the Legislature, and they have been tried on one side only, in the committee-room, the body of the Legislature having little or no knowledge of them. It has been said, whether truly or not, that in some cases the chairman of the committee has acted as chief justice, and also as associate counsel, and occasionally has been seen around the corner after dark in friendly negotiation with the claimant. All must agree that this is a very unsatisfactory way to adjudicate claims so far as the State is concerned. We would not like to have our individual rights disposed of in that manner. If the committee-room of the claim committee were the proper place, and the committee and the Legislature above suspicion, neither have the requisite time to devote to the investigation. The Legislature can know but little about the merits of the case, and large sums are yearly appropriated from the treasury to pay claims that would not bear strict scrutiny in a court of law. It has been said that the Legislature has been in the habit of passing laws, mandatory in their character, referring claims to the canal board for examination, giving the board no discretion but to award such sum as the claimant might prove before them, regardless of the question whether the State was legally or equitably bound to pay them. It seems to me eminently proper that a tribunal like the one proposed should be created, in order to afford to the citizens and the State alike, proper protection in the settlement of disputed claims. Some gentlemen of this committee may not know the number and magnitude of claims preferred against the State. Sir, within the last year, the canal appraisers tried claims, in the aggregate amounting to over \$500,000. Their awards did not amount to that sum, but a sum sufficiently large to show the importance of having them thoroughly investigated. A large number still remain in their office to be decided, and numerous cases have been sent to the canal board for adjudication under special acts of the Legislature. One important advantage, which I think will flow from constituting this court of claims will be this, that there will be greater uniformity of decision. Now an appeal is allowed from the decision of the canal appraisers to the canal board. From the decisions of the latter board there is no appeal, their decision is the end of the law. Now a certain class of claims are annually sent by the Legislature to the canal board for adjudication, others of the same character are sent to the appraisers—one to the superior the other to the inferior tribunal. Under such circumstances great liability to conflict of decisions exists. In my judgment, it is quite important that this liability to conflicting decisions should be removed and uniformity established. This desired object will be obtained by creating and establishing the court of claims as proposed by this section.

Mr. BECKWITH—I am opposed to the amendment offered by the gentleman from Erie [Mr. Verplanck], for the reason, and the plain reason, that it is a matter of legislation. I am also opposed to all of the provisions contained in this section after the words, "such claims shall be tried without a jury." All the residue of that section, excepting the words, "the judges of said court

shall hold their offices for the term of five years, unless sooner removed according to law." And the reason is, that I think it altogether better to leave the details and the rules of law that shall govern this court of claims to be established by the Legislature; and they evidently will provide what rules shall govern this court in adjudicating upon these claims; and they will also make provision for appeals; and they will also make provision for security when the claim is prosecuted, if such a provision be necessary. And if, when any such provision shall go into operation, they shall find that it does not work well in some of its details, it will then be within the power of the Legislature to change the details. I am opposed to introducing into the Constitution provisions, the framing of which strictly belong to the Legislature, and which can be safely confided to them. They will be in a position, after this court has been in operation for a time, to judge better than we can as to what rules should regulate them. It says here that these judges shall, in case there be a claim for damages for real estate, go and view the premises. That may be all very well. Let the Legislature make provision for that, to regulate the manner in which it shall be done. It also provides that they shall act upon their own judgment. Take into consideration what they shall see when they have examined the premises. Let the Legislature make provision that "in all respects such court shall be governed in its adjudications, by legal rules," etc. Those are provisions which strictly belong to the Legislature, and they can regulate all that matter; and if they find that the regulations which they have adopted do not work well then it is within their power to change them. In regard to the statute of limitations: I would allow the Legislature to pass all laws in regard to limitations. The statute of limitations should prevail in favor of individuals. Leave it all to the Legislature. At the proper time I shall move to strike out these portions of the section if no other gentleman does it.

Mr. SCHOONMAKER—It appears to me that the passage in the other section is sufficient, that "the Legislature shall not audit or allow any private claim or account against the State"—that that is sufficient to come in the following section. The way the section now stands and the way it is proposed to be amended by the gentleman from Clinton [Mr. Beckwith] will dispose of all auditing duties, and upon the court of claims will be conferred the duty of auditing every claim against the State. You confer upon them the duty of all the auditing officers in the State. It says, "in which court shall be adjudicated all claims against the State."

Mr. RUMSEY—Why not put in the word "controverted"?

Mr. SCHOONMAKER—Suppose the word "controverted" is inserted. Here is an officer invested by law with power to audit certain accounts against the State. The claimant has had his account audited by the proper officer appointed to audit claims of this character. He thinks, perhaps, he should have a few dollars more than was audited to him. Under this section he has a right to go to the court of claims in reference

to it, notwithstanding the exclusive right of auditing conferred upon that officer by the Legislature. It strikes me, sir, that it is better, instead of thus creating a court of claims by constitutional enactment, simply to leave it to the Legislature to provide by general law in reference to the allowance and adjudication of claims. Then they have the power to create a court of claims to which can be referred claims of a certain character, and they can allow claims of another character to be adjudicated in another way, and not confine them to a particular court, created by the Constitution as a court of claims. I think a provision something similar to this—that the Legislature shall provide by general law for the adjudication of all controverted claims against the State—will be all that is necessary.

Mr. BELL—This is one of the most important questions that will come before this Committee. It involves a very large amount of money which passes through these different boards yearly. I am of the opinion sir, that the board of appraisers awards between a quarter and a half million of dollars annually, besides the awards made by other boards. It is a question which deserves a great deal of attention and consideration, and I must say that I am a little surprised that the committee seem to manifest so much indifference on the subject. The provision of the present article is to introduce an entirely new system of disposing of claims against the State. Claims are now mainly passed upon by the board of appraisers particularly those that relate to canal damages, arising from the omissions and neglects of public officers. Damages that may be sustained from nearly any cause whatever may be committed to this board by the Legislature. Claims are also referred directly to the canal board without passing the board of appraisers at all. Claims are too, to some extent, audited and allowed by the Legislature, but mainly by the acts of the Legislature referring certain claims that could not otherwise come before those boards without a special act. And sir, it seems to me, from the multiplicity of boards and from the concurrent jurisdiction in these different boards at present we have no system on this subject. Claims are received and adjudicated according to the caprice of these different boards, and not from any plan or system that has been adopted by the Legislature or defined in our Constitution. It has been customary, when it is intended to favor a certain class of officers, to take these claims out of the legitimate channel and refer them to some special board or individual, without any appellate jurisdiction; and in this way the State is liable to be wronged largely and frequently. It is now proposed to institute a new and entirely different system by establishing a court of claims. I was very much pleased to hear the opinion of the gentleman from Chemung [Mr. E. P. Brooks], one of the present members of the board of canal appraisers, on this subject, and of his approval of the establishment of a court of claims. He has had a practical knowledge of the working of the present system, and is more conversant with it than most of the members of this committee. His judgment will go far in my mind to warrant the propriety of establishing this

court of claims. Our present provision is very imperfect on that subject. The committee who reported this section have not sufficiently informed themselves if the result of their investigations is expressed in this article. There is too much legislation in it, I think, for the purpose for which it was designed. The present section seems to provide that all claims shall be referred to this board. There is a large class of claims against the State that are not controverted. Every man who has a demand against the State has a claim against the State, whether for services or otherwise; and there are numerous provisions of law by which these claims are to be settled and paid. Now, certainly the committee cannot desire to refer that class of claims to a court of claims. They are already provided for. I will ask the attention of the gentleman from Clinton [Mr. Beckwith] to the amendment that I shall propose when it is in order. Instead of striking out, as he has proposed in the fourth line, the word "such," and then the balance of the section, I would add after the word "State," in the fifth line, the words "not otherwise provided for," so that it shall read, "in which court shall be adjudicated all claims against the State not otherwise provided for by law." This will relieve the difficulty that he apprehends, and meet fully, to my mind, the case under consideration. Again, I should strike out after the word "direct," in the sixth line, the balance of the section, except as to the term of office of the judges of the court of claims.

Mr. VERPLANCK—I concur with the gentleman who has just taken his seat that this is a most important provision. Hitherto, when claims have been made before the canal appraisers, or a committee of the Legislature, or other boards to whom accounts are referred by the Legislature, the people have not been represented by counsel, the testimony taken upon such investigation has been *ex parte*, and the witnesses have sworn with a knowledge that they were not to be cross-examined. When an engineer testifies in regard to an estimate, he might tell a somewhat different story if he supposed he was to be subjected to a rigid cross-examination. I am entirely willing that the court proposed by the committee making the report should be established, and I am quite content that it should proceed without a jury, because it would be impracticable, generally, in such a court, to have a jury to pass upon cases. But while I am content to have this court established, and to have it proceed contrary to the practice in common law actions, without a jury, I am unwilling for one, and will not consent to leave to the Legislature the point to which my amendment is directed. If, by constitutional enactment, you take away trial by jury, there is no reason why you should not, at the same time, say that the court shall state the facts they find upon proofs. Much has been said about the corruption of the Legislature, with how much justice I do not know; but I can plainly see that, when this court is established to act without a jury, if the Legislature should fail for any reason, or the court itself fail, to make rules providing that the court shall put upon the record the facts on which they ap-

propriate the money of the people, great wrongs would be committed. I propose while we have the power here in this Convention to stop this source of trouble by adding after the word "jury" the amendment I have proposed, so that the section will read "such claims shall be tried without a jury, but the court in each adjudication shall state the facts they find upon the proof in the case." No possible harm can arise from this provision.

Mr. CONGER—Do I understand the gentleman from Erie [Mr. Verplanck] to affirm that at common law a man who has a suit against the State may claim a jury?

Mr. VERPLANCK—No, sir.

Mr. CONGER—I think it would be well for the committee to reflect a moment before they undertake to put in this section a loophole so large and so expansive that a man of ordinary cunning could drive a coach and four through it. Gentlemen seek to make a distinction between claims. I do not understand that any such distinction is patent or applicable to this section. Under the Constitution, as it will doubtless be ordained, there will be a provision that the Comptroller shall pay no money unless it is authorized by law. If by law, then, any person in the service of the commonwealth, has a right to receive any certain amount coming under or within the regular appropriation bills, that is paid as a matter of course; and I do not think that any court in this State would ever say that the right to receive such sum of money was a claim upon the State within the purview of this section. When you want to raise a distinction between a claim that is controverted and one that is not, you concede the whole difficulty that has arisen in the operations of government, and you make it possible for the officers of government and persons having claims to combine and agree that the claim shall not be controverted. What, then, would be the object of having a court of claims? Could not the canal appraisers agree with the man having a claim for canal damages that the claim should be audited and paid and not controverted, and could they not share the spoils between them? There is but one safe course to adopt. Unless money is appropriated by law under the regular appropriation bills, and the Comptroller is authorized and justified under the law and Constitution, to pay the money in pursuance of the provisions of those bills, every single claim, every single demand against the State, otherwise than is so specifically set forth in every appropriation bill should be considered as a claim. Such claim should go before the court of claims. And suppose in that way this court to have some extra duty to perform in the way of revising accounts, would it not be safer to give them that charge than to make this discrimination between a claim against the State uncontroverted and a claim that is controverted? I do not know how it strikes other gentlemen, but I know that the difficulty has been, in my limited experience in the Legislature, to prevent a combination between State officers acting as judges, and claimants against the State, from a conspiracy to defraud in claims that are audited by the canal appraisers and by the canal board and not revised by the Legislature. When you come to adopt an entirely new provis-

ion, taking away all that power from the Legislature, do you suppose that it is a sufficient check on corruption or an adequate guard over the treasury to say that you will divide claims into two classes—controverted and uncontroverted? I will guarantee that there would not be a controverted claim against the State for the next ten years. It is petty stealing that robs the treasury. It is not the grand larcenies that are sought to be committed that cause all the leaks. I remember when a distinguished judge from Canada came to Albany with a claim against the State of this kind. He claimed that he was the lineal descendant of a distinguished British officer in the Revolutionary war, who owned property at Little Falls; that the State had interfered and taken possession of that property and deprived his descendants of what was their lawful right. He said that the property was worth several millions, but as it was a hard case against the State he would compromise by taking one million. Now, sir, on the showing of such a claim as that, I regret to say that the claim passed one of the most vigilant committees that was ever appointed in the State of New York; and it was reported upon favorably to the Senate, after having passed the Assembly; yet the claim was one which, the moment it received anything like a legal examination, the moment the question was probed as to the action of the State in violating the provisions of the treaty between the United States and the government of Great Britain, after the termination of the war, it was found that the claim was mere vapor. There is no great danger from such a claim as that; but your little claims, which are legion, rob the treasury—the claims that are adjusted day after day by your board of canal appraisers, sometimes by your canal board, sometimes by other officers. I hope that this committee will not allow itself to be deceived. The moment you raise such a distinction as that between a claim which is controverted and a claim which is uncontroverted, you will have very little business for the court of claims, and just the same amount if not a much larger amount of claims upon the treasury, because you have taken away the revisory power of the Legislature and you leave all in the hands of the subordinate officers of the government. And experience has shown that all these robberies that are complained of, all these larcenious takings from the public treasury originate in these minor boards, who sit and hear and determine upon all sorts of testimony, and allow a claim very frequently in order to get rid of the importunity with which it is pressed. I hope the committee will pause. I hope there is wisdom and skill enough here to frame an article so as to make a clear and broad line of distinction between moneys that are to be paid out of the public treasury on the warrant of the Comptroller, pursuant to the regular appropriation bills of the government, and all others. Let these last stand in a class by themselves, whether they are controverted or uncontroverted.

Mr. E. A. BROWN—I need not repeat, Mr. Chairman, that the provision under consideration is an important provision. I need not repeat

that there is a necessity for some such provision not only for protecting the interests of the State against unjust and unfounded claims, but to protect also the interests of meritorious claimants. Because, sir, while it is true that the State has suffered by the act of the Legislature in regard to private claims, by the action of the canal board upon private claims, and perhaps by the action of the canal appraisers on such claims, it is equally true that meritorious citizens of the State having just claims against the State have also suffered by the manner in which these claims have been investigated and decided. I desire to remark that I have been perfectly delighted within the past two or three days at the change of sentiment which seems to be finding its way into this Convention in regard to the merits of the Legislature of the State. We find gentlemen here, who have had very little confidence in that body, willing now to intrust to it some of the subjects of legislation in this State. We find them earnestly entering their protest against this Convention legislating upon subjects instead of providing constitutional provisions under which the Legislature itself may act. What do we mean by the term "claims?" Strictly speaking if a sheriff had taken a prisoner from his county to the State prison he is entitled to pay for it as a claim against the State; any similar service that is performed by a public officer or by a contractor doing work for the State, is a proper claim for pay, and the person is entitled to it; and the existing laws provide for that payment without his going to any court or any tribunal for litigation or adjustment excepting the auditing officer and those who are authorized to pay. Now, what do we say in this section? We find here a provision for a court of claims, to consist of three judges, to be appointed on the nomination of the Governor, by and with the advice and consent of the Senate, in which court shall be adjudicated all such claims against the State as the Legislature from time to time, by general laws, shall direct. If it is conceded that the Legislature are competent to point out what claims shall be brought before this court, and how those claims are to be taken up, examined, considered and decided, it seems to me that we need not spend a great deal of time in criticism in regard to this particular provision. It seems to me that we may leave that to the Legislature of the State. I have confidence enough in that body to justify me, in my own estimation, in voting to leave to it the decision, the pointing out, the specification of such claims against the State as may be brought before this court for litigation. But, sir, I have no sort of doubt that in doing so, in connection with the other provisions that are proposed, justice will be done to the State, and that the treasury of the State will be saved from thousands upon thousands of unjust claims which are made, and successfully made, against the treasury, in one form or another. And, sir, with such a court, by having an officer before it to represent the State, its interests can be protected. And individuals also who have claims can there be properly represented. They can bring up all their testimony—furnish all their proof—which I un-

dertake to say is not done practically and cannot be done before some of these boards, and particularly before the board of canal appraisers. These appraisers have a great number of claims before them, and they go into a neighborhood and hurry through—hear but a part of the testimony that is desired to be offered—jumble things together and hasten them on, and unless the claimant is persistent, and has a brazen-faced assistant, he may be put aside and his claim, especially if it is a small amount, however meritorious, gets the go-by. In a court, organized as this court is to be organized, every party having a claim will be entitled to a full and fair hearing. He is entitled to have that now; but I speak practically what I know to be true, when I say that there are a great many cases, especially small claims, which are as important to the claimant as large claims are to other claimants, which do not get the consideration to which they are entitled. Of course I have no particular affection for the precise language of this section; but I desire that this effort should be made, that this experiment should be tried, and that such court should be so organized as to promise to be of public benefit; that it should have such power as would enable it to be of use to the State, and to the people of the State, of use to the public and to private citizens; and I hope it will not be so mutilated and cut to pieces as to leave out all that is beneficial and leave nothing but what may turn out to be a stumbling-block and utter failure for the purpose we desire to accomplish.

Mr. CLINTON — It seems to me, that the language of this section, so far as it seeks to define or separate the claims which, under the general laws passed by the Legislature, are to be adjudicated by the court of claims, from the legislative appropriations for those claims which are audited by the ordinary auditing officers of the government is not successful. If it be not, it appears to me that there is a source of information to which we ought to apply, and to which, I fear the committee has not resorted. The government of the United States or the Congress of the United States has, by a special statute, organized a court to adjudicate upon claims against the government and define its jurisdiction. I may be mistaken, but if they did that, then of course, the very questions which now embarrass us, were passed upon by the Congress of the United States, and that statute has received construction under a practice of many years. And upon a matter of so much moment as this, if there be a doubt about it, I would venture respectfully to advise the committee that they should recur to that statute and consider its language before they finally pass upon this section. Mr. Chairman, it seems to me (to pass to a matter of less moment; though perhaps, after all, it may be a matter of moment), that in the opening words of this section the committee use very extraordinary language for the purpose which they had in view. I say it with no disrespect to the committee. I think they have inadvertently fallen into an error which it would be well for all our sakes to correct. The first line is "the Legislature shall provide by law for creating a court of claims." Now, it appears to me, that when the Legislature have done

that, if they pursue this authority literally, they have devolved upon somebody else the duty of creating the court. I prefer to use direct and plain language in such cases, and by that language to impose upon the Legislature clearly a duty beyond that of mere creation. I should prefer to say "the Legislature shall create and regulate a court of claims, to consist of three judges," etc. I make no motion, sir; but I think this is an important matter. I merely throw out these suggestions to those who avow themselves the friends of this particular measure, in order that they may, if they consider them worthy their attention, perfect this section. I reserve, of course, the right, after I shall have heard the discussion, of forming any opinion as to the merits of the proposition.

Mr. RATHBUN—If the gentleman [Mr. Verplanck] will look at the latter part of what was called the second section, but is now one section, he will find it provided that "the decision of such court may be reviewed on the law on appeal to the court of appeals." I would like to know whether that is the place where he proposes his amendment?

Mr. VERPLANCK—No, sir; I propose to insert my amendment after the word "jury," at the end of line six. The fact that the court of appeals will only review law questions, does affect the importance of the amendment I have proposed.

Mr. RATHBUN—The committee having charge of this, being very desirous of providing a remedy which would relieve the Legislature from a vast amount of legislation, and which would relieve it also from a business which has given it a very bad reputation, set themselves to work to devise a remedy which would effect that object—whether successfully or not is for the Convention to determine; but the labor, discussions, examinations and deliberations, for the purpose of preparing a subject of that importance, so as to make it fit to be adopted—the committee have performed all that duty to the best of their ability. It is not to be decided, I apprehend, upon a mere reading of a provision of this kind, whether they are right or wrong, unless a person is gifted with intuitive knowledge far beyond his fellows. In the first place, in order to determine thoroughly whether the thing is right or not, the whole scope and object intended by the committee should be comprehended, and the whole thing should be considered in connection, as forming one plan, sufficient to work out the great object in view, by the committee. If gentlemen would read all this together in that way, I apprehend there would be less objection, a great deal, than there is now. There cannot be any section that, if read by itself, passed upon by itself, and altered and amended, might not interfere with the entire thing intended to be done, and which the committee were vain enough to believe that they had done very well as a whole. Therefore I hope that gentlemen will bear in mind that all these sections are necessary, or were in the estimation of the committee, to make up the plan by which the Legislature might be relieved of a large amount of labor, the State protected, that large sums of money that have heretofore been thrown away may be saved to the people and kept in their

pockets, instead of being extracted therefrom by taxation. These things were designed to effect these objects; and I apprehend that if the committee will take time and reflect upon it, as the committee having it in charge have done, they would see that it would be difficult to improve upon it. The first section provides for the removal from the Legislature of all this kind of legislation, as has been proposed. The next question is, what is to be done with it? Where are those parties to go who have private claims? They are about to be turned out of doors. Those that have claims against the State—where are they to go? Why, you are to establish a tribunal before whom they are to appear and litigate the claims which they have against the State. That is the object. They are entitled to a fair trial before some tribunal; they are entitled to have justice done to them, as between man and man. That they are entitled to. They are not entitled to plunder the State, and take from it what is unjust and improper, simply because the State is a great, rich, and powerful body, containing millions of people, with but few persons engaged in the protection of its interests, and frequently left almost entirely unprotected against the depredations of individuals. Now to guard against that, the committee believe it necessary to establish a court where there should be at least integrity and legal knowledge enough to determine upon the question of right and wrong between the claimants on the one side and the people on the other; and they felt that the best element they could introduce into that court would be an honesty that would defy the approach of anything like improper influences. That is what they thought; and that that forum should be one that should determine the law and the facts of the case, giving to either party, either the State or the claimant, a right to go above that court to the court of appeals on questions of law. Now, I say to the gentleman from Erie [Mr. Verplanck]—I think this is the proper place to insert his amendment if it is to be adopted—an appeal to the court of appeals would be wholly nugatory unless the facts found were there to show upon what ground the question of law was raised. It would be perfectly idle to give the right of appeal to the court of appeals in behalf of the State or in behalf of the claimant, on a question of law without having the facts found by the tribunal before them, to show upon what the question of law was based. The committee thought, and I apprehend still think, that the practice upon appeal was a matter that must be confided to the Legislature. The right of appeal is secured, it cannot be taken away; but the practice upon which that appeal should be based, the finding of facts, and the manner in which it should be carried up, the giving of security, all those matters are matters for the Legislature.

Mr. VERPLANCK—I do not place my proposition upon the manner of getting to the court of appeals, or upon the fact that a claim is to go there at all. The object of my amendment is to prevent the judges of this court from making a general report that a claim has been made for \$5,000 and that they allow \$2,000. When these "class claimants" come before the Legislature,

and succeed in inducing the Legislature not to require a detailed report of the facts upon which an adjudication is based, the greatest frauds may be practiced.

Mr. RATHBUN—As I understand it, this amendment is wholly unnecessary, although I concur with the gentleman fully and entirely in regard to the proposition he makes, simply because I want such a state of facts as will show distinctly the basis upon which they render a judgment, so that any man can tell whether they are honest or not. But, sir, I submit that that is the business of the Legislature to fix and determine the record to be made by them on every point. I trust the Legislature will do that as it ought to be done. I am in favor of wiping out, and reckoning from this day as a new era; and I propose that we shall look upon the Legislature as a body of men that are just as fit to be trusted as any other body of men. We must do it. It will not answer to say that, because other Legislatures have been dishonest, if you please, we are not to trust them.

Mr. OPDYKE—In regard to the object to be accomplished by these provisions, it seems to me there can be no well-founded difference of opinion. The experience of the past has shown that neither the State nor those holding claims against it have received, under the provisions of the present Constitution, that exact justice which is to be desired. Therefore, I am in favor of the proposed court. But, sir, I am in favor of the amendment of the gentleman from Clinton [Mr. Beckwith], to strike out the words "that this court shall have cognizance of such claims as the Legislature may, by general law, direct." What is the essence of that proposition? If it be left out, where will that court stand? It will stand on precisely the same foundation of law and justice that the whole judiciary of the State stands. It will have the jurisdiction of all claims against the State; all controverted claims, as the amendment proposes; and it will be governed by the principles of justice and the practice of the courts in regard to controversies between individual citizens of this State. Why should it not stand there? Why should the Legislature be given power to pass a general law providing that one class of claims should be adjudicated by that court and leaving out another class of claims perhaps more just and more meritorious? Why, I ask, should we distinguish between the claims of different citizens or between different classes of claims? Why should not all have the same rights against the State that they would have in similar claims against individuals? Does the State desire to repudiate any class of just and legal claims? If not, the only general law that the Legislature could with propriety pass would be that this court shall have jurisdiction over all controverted claims against the State that are grounded in justice and legality. That is the only proper general law it could pass. That principle exists without any legislative action. But, sir, if those words be left in, it may happen that there may be a very meritorious class of claims that from accident or design (because I am not one of those who believe that the Legislature of this State is always as pure as it should be) that the Legislature will

withhold from the court under the general laws it may pass, and that the citizens having such claims will be compelled to come here and to wade through a greedy lobby waiting at the doors of the Legislature before they can get any relief on such claims. I think, sir, that the State is bound as an individual to pay honestly and fairly every just claim against it, and nothing more. If we leave out that clause we will have the jurisdiction of the court precisely right. If that be struck out I shall then propose another amendment, in the first line, making it obligatory upon the Legislature to pass this law establishing a court of claims at its first session after the adoption of this Constitution. As it stands now, the Legislature may postpone it indefinitely. With regard to the amendment of the gentleman from Erie [Mr. Verplanck], I have had some doubt of its propriety. It seems to me that this court, being an open court, as it necessarily will be, for I take it for granted it is not to be a star-chamber, the testimony given there, and the facts established will be open to the whole community. This would seem to be a sufficient safeguard against improper decisions. We have found the judiciary pure. We have never heard scandal against it, as we have against the Legislature; and for one, I do not believe that either the State or individuals would have anything to apprehend from impurity or wrong from that court. For that reason I cannot regard the precaution of the gentleman from Erie [Mr. Verplanck] as necessary. The only ground of objection that I can see is that of dispensing with a jury; but inasmuch as the court will be public, I think that a sufficient guaranty of safety to public and private interests.

The question was put on the amendment of Mr. Verplanck and it was declared carried, on a division, by a vote of 46 to 35.

Mr. POND—I move to amend by adding at the end of the section the following:

"And shall severally receive at stated times for their services a compensation to be established by law, which shall not be increased or diminished during their continuance in office."

I do not, on looking through this proposed article, find anywhere any provision made for any compensation for these judges. I suppose, of course, they are to be compensated, and I have therefore added this provision. It is a similar provision to the one in the existing Constitution, providing for the compensation of the judges of the court of appeals, and the judges of the supreme court.

The question was put on the amendment of Mr. Pond, and it was declared carried.

The hour of two having arrived the PRESIDENT resumed the chair, and in accordance with the standing order, the Convention took a recess until half-past seven o'clock.

EVENING SESSION.

The Convention re-assembled at half-past seven o'clock.

Mr. SMITH—I ask leave of absence for Mr. L. W. Russell until Tuesday,

No objection being made, leave was granted.

Mr. N. M. ALLEN—I ask leave of absence for myself for to-morrow and Monday.

Mr. GREELEY—I object to these leaves of absence for to-morrow, or we shall be left without a quorum.

The question was put on granting leave to Mr. N. M. Allen, and it was declared carried.

Mr. SILVESTER—I ask for conditional leave of absence for Monday evening and up to Tuesday at two o'clock.

The question was put on granting leave and it was carried.

Mr. BALLARD—I have intelligence from home to-day, which will require my presence, and I ask leave of absence until Wednesday morning.

The question was put on granting leave and it was carried.

Mr. CHESEBRO—I ask conditional leave of absence for Monday evening and Tuesday morning.

The question was put on granting leave and it was carried.

The Convention then resolved itself into Committee of the Whole, on the report of the Committee on the Powers and Duties of the Legislature, Mr. BARKER, of Chautauqua, in the chair.

The CHAIRMAN announced the pending question to be on the amendment offered by Mr. Beckwith.

Mr. BOWEN—Is an amendment now in order?

The CHAIRMAN—It is.

Mr. BOWEN—I offer an amendment.

The SECRETARY proceeded to read the amendment as follows:

Erase all of the section after the sixth line, down to, and including the word "individuals," second line, and in place thereof insert the following:

"And the Legislature shall prescribe the mode of proceeding in bringing such claims before the court, and in prosecuting and defending the same."

Mr. BOWEN—I am inclined to favor the proposition to constitute a court of claims. As I understand the report, this court, in the first place is to pass upon all the claims that have heretofore been passed upon by the canal appraisers. So far as that is concerned, I am not aware that there has been any serious complaint, that all claims before that board have not been passed upon and disposed of with intelligence and fairness, and that the rights of the State and of individuals have been protected. Then there is another class of claims, which as I understand, the Legislature have been in the habit of passing upon from time to time, which in my view the Legislature is a very unfit body to pass upon; and a court constituted as it is proposed to constitute the court of claims, is better fitted to pass upon such claims, than the Legislature; but it appears to me, that after providing in the Constitution for such a court, and prescribing its jurisdiction, the Legislature should be permitted to prescribe its mode of proceeding. If this Convention undertakes to adopt all of the provisions necessary in order to put the court into successful operation, we shall have to adopt, I might almost say, a code of laws. In the first place, you must prescribe the manner in which these claims must be presented to the court, and also how the State shall have notice that such a claim has been brought before the

court, and the manner in which its defense shall be conducted, and how the witnesses are to be obtained and the manner in which the facts are to be elicited before the court. It appears to me this can better be done by the Legislature. This section prescribes in part the rule of proceeding, and only in part. It seems to me, we should leave the whole of that to the Legislature, and with that view I have offered the amendment which has been read. The amendment offered by the gentleman from Erie [Mr. Verplanck] is a very proper provision to be adopted by the Legislature. I suppose the object of it is, where a claim has been passed upon by the court to put it in a position where their decision may be reviewed. You may with just as much propriety, when you are constituting the court of appeals, or the supreme court, prescribe the manner in which and rules by which cases and bills of exceptions shall be settled, preparatory to a review of the decisions of the lower courts. All that should be done by the Legislature. Let us merely provide for constituting the court and its jurisdiction and let the Legislature do the remainder.

Mr. HALE—I would like to ask the gentleman from Niagara [Mr. Bowen] a question. Whether he is aware that the section we are now acting upon includes what appear to be two sections here. The chairman of the committee announced that the section following was printed as a separate section by mistake and should be a part of this section.

Mr. BOWEN—Commencing with the statute of limitations?

Mr. HALE—Yes, sir.

Mr. BOWEN—I did not understand that to be the fact.

Mr. HALE—Inasmuch as this is all one section, I would suggest to the gentleman to modify his amendment so that it will extend only to the word "individuals," in the second line in the succeeding section, leaving the appellate jurisdiction of the court of appeals and term of the judges to the court in the section.

Mr. BOWEN—I see the propriety of the suggestion of the gentleman in regard to the statute of limitations; it should be left to the Legislature. I will accept that modification.

The question was put on the amendment of Mr. Bowen, and it was declared carried.

Mr. STRATTON—I offer the following amendment:

Strike out from lines four, five and six the words "in which court shall be adjudicated all such claims against the State as the Legislature shall, from time to time by general laws, direct," and insert "which court shall have exclusive jurisdiction over all controverted claims against the State, subject only to such review upon appeal as is in this section provided."

It was doubtless the object of the committee in framing this section to provide for a court which should have exclusive jurisdiction of all controverted claims against the State. I think, with all deference to the committee, that they have been unfortunate in the language in which they have undertaken to express that. The words which I ask to have stricken out by my amendment are

such as give to the Legislature power to limit the jurisdiction of that court to such claims against the State as the Legislature shall, from time to time, by general laws, direct. The object of this amendment is to provide that this court may be entirely separate and distinct and divorced from the Legislature in every and all matters except those where the Legislature shall be called upon to pay after a final adjudication.

Mr. RATHBUN—Mr. Chairman, the vote taken a few minutes ago, striking out certain portions of this section, I apprehend, very few gentlemen of the Convention understood precisely what was stricken out. I hope they will take pains to investigate it, and when we get into Convention upon this article I shall desire to restore the part stricken out; but first I move to reconsider the vote taken upon the amendment of Mr. Bowen. Then, sir, I propose a slight alteration in the first portion of the section. Instead of the words "the Legislature shall provide by law for creating a court of claims," I propose to insert the words "there shall be a court of claims." Now, sir, in regard to the remarks made by the gentleman who offered the last amendment [Mr. Stratton] on the question of exclusive jurisdiction. I suppose every lawyer knows that there is no court in this State in which any party can bring an action against the people of this State or against the State. It is not in the power of any person to do that, and therefore the concession made here, by the establishment of this court, for the purpose of allowing claims to be tried, and conferring jurisdiction upon this court is of course exclusive. No other court can entertain any such case. Therefore, without this amendment, it is exclusive, for the reason that no other court has jurisdiction, nor can a party bring an action against the State. It is proposed to concede the right in those cases to allow parties to come before this court and prove their cases and take the decision of this court. This gives to this court jurisdiction over these claims. It is the only court in which such claims can be tried. Of course, the jurisdiction is exclusive. So with regard to this amendment. I apprehend in that view it would fall to the ground and have no effect. Because this thing has been done not in a hurry, but it has been done advisedly and with a great deal of labor and caution. It is impossible that these suggestions should supply the place of the amount of labor that has been bestowed upon this article by the committee. In regard to the amendment offered by the gentleman from Niagara [Mr. Bowen], to strike out in the sixth line "such claims shall be tried without a jury." Now, why strike that out?

Mr. HALE—The amendment does not strike that out.

Mr. RATHBUN—I understood it to include that.

Mr. HALE—No; it does not go so far.

Mr. RATHBUN—"In all cases where such claims shall amount to \$500 or more, and be for the value of damages to real estate, the judges of said court shall, and in all other cases may, view the property in question." All that is stricken out; what will you have in the place of it? The gentleman was right when he said this court was

to take the place of the canal appraisers. The Committee on Canals have reported an article abrogating that office, and that leaves nobody else to take charge of that business, unless it comes to this court of claims. The object of that provision was that this court should visit these premises and examine them, to ascertain their value upon their own inspection, and then receive the evidence offered, together with the knowledge they possess in regard to the value and condition of the property about which they were inquiring. Now, anybody who understands the mode of trying these canal claims probably will understand the fact, that the whole line of the canal, from one end to the other, is a line of standing witnesses, connected with each other, and you can obtain no testimony in the neighborhood which is of any sort of value. You must carry your witnesses (being strangers) to the ground to look at the premises, and bring them back into court to be examined as witnesses on the part of the claimant. Each man stands at his neighbor's elbow, to be a witness in his case, and his neighbor to be a witness for him on the trial of his case. Thus you have a canal line from end to end, with a row of claimants and their witnesses standing on the right and left. There is no way that I know of by which you can protect the rights of the State, except by these judges being sent upon the ground to inspect and examine the premises, and to be able to appreciate the testimony which is given. If this be stricken out, what have you got in the place of it? You have got a general direction to the Legislature to provide—what? That these judges shall go there? Perhaps they may; perhaps they may not. One single line provides for it; so there is no escape from it; they are bound to go. Call it legislation if you can. Yet no man can fail to see that it should be provided for in some way. And shall we forego the certainty of that provision, when it occupies but two or three lines and is a remedy of immense value to the public? I am inclined to make the Constitution free and clear of all legislative matters, and yet in this matter I am in favor of protecting the rights of the State where it can be done by putting a provision in the Constitution about which there will be no doubt. I, therefore, move a reconsideration of the vote by which the amendment was adopted.

Mr. E. A. BROWN—In a very few remarks which I made this morning in regard to this section, I took occasion to allude to some practices before the canal appraisers, to some of the acts of the appraisers, and to some of the grievances of the claimants. What I said was intentionally said. I allude to it now simply for the purpose of saying that those remarks have no sort of reference to any officer of the present canal appraisers. It had reference to a particular time—some years ago—and to which they were perfectly applicable, and were designedly made. I take pleasure, sir, in saying that the present board of appraisers have done away with those grievances; they have discharged their duty in respect to the same claims, and so far as I have had any acquaintance, they have been able, diligent and faithful in the discharge of their duty; and in one essential respect, sir, they deserve

especial commendation, which is, for the manner in which they keep the records of proceedings. They have also a clerk who is competent, ready and prompt in the discharge of his duty. I desire to say one word further in corroboration of what has fallen from the lips of the honorable chairman of this committee [Mr. Rathbun]. The law requires that the canal appraisers should visit and examine the property in relation to damages about which they are called upon to adjudicate; and, sir, that requirement saves to the people of this State annually, thousands upon thousands of dollars. It is very easy for parties and witnesses—although they may not be corrupt, but accommodating witnesses, honest in their intentions if you please—to make a case on paper before the appraisers, by verbal testimony, that would be entirely changed by the appraisers, visiting, examining and inspecting carefully the property itself. Sir, this provision requiring the judges of the court of claims to discharge this duty of personal inspection, is one of the greatest importance, and it seems to me there can exist no sort of apology for omitting it in this provision. If we provide for this court, let us provide for it in such a way that, when organized, and when it enters upon the discharge of its duty, it shall be a court of some real and substantial value to the people of this State as well as to those who have claims against it.

Mr. HALE—It seems to me, with great deference to the chairman of this committee and the gentleman last up, that they entirely misapprehend the motives of the gentleman from Niagara [Mr. Bowen], in offering this amendment, and of the gentlemen of this committee who voted for it. It was not because they had any objection to a rule of evidence, or because such rule of evidence is not, in their opinion, proper, but because it would be something entirely anomalous to incorporate into the Constitution a rule of evidence to govern any tribunal. I agree fully with both those gentlemen in regard to the propriety of there being a law providing that the judges of the court of claims shall personally inspect property where damages are claimed, but I do not think it desirable to put it into the Constitution. We do not put in the Constitution any rule of evidence to govern the court of appeals, the supreme court or any of the courts except this, and I can see no reason why we should put in a rule of evidence to govern the court of claims. A gentleman stated that the Legislature provided canal appraisers to do this precise thing which is enjoined here upon the court of claims. Is there any probability that the Legislature will not do their duty in regard to this court, and prescribe that they shall do what the canal appraisers are now compelled to do. I hope the motion to reconsider will not prevail.

The CHAIRMAN—The motion to reconsider cannot be entertained at present, as it would bring before the committee two pending amendments.

Mr. HALE—I wish simply to say I hope it will not prevail here, for the sole reason that I would not like to see such an anomalous provision in the Constitution.

Mr. BOWEN—I wish to say only one word more. The gentleman who last spoke expressed

my sentiments upon the subject of striking out the rule requiring this court personally to examine the premises or the subject-matter in controversy. I take it for granted, if it is proper for that to be done, the court will do it. I believe the canal appraisers have done it universally, although there is no provision in the Constitution requiring them to do it. Whether there is a provision of this kind in the statute or not, I am not aware. I believe there is. It is a very proper subject for legislation. If experience shows that some other rule of evidence should be introduced, the Legislature will introduce it, or they will modify the provision in relation thereto from time to time as experience shows it to be necessary. But I acted inconsiderately, as I now think, when I accepted the suggestion of the gentleman in modifying my proposition. When I did that it was upon the supposition that the provision proposed to be stricken out by the gentleman adopted a statute of limitations only, but when I came to look at it I found that it was an entirely different provision. It provides that the statute of limitations as between individuals should also apply as between individuals and the State. I am in favor of that, and at the proper time I shall move to amend by re-inserting that provision.

Mr. STRATTON—For the purpose of permitting a motion to be made for reconsideration, which the Chair has stated cannot be made while two amendments are pending, I will for the present, and for that purpose, withdraw the amendment I offered.

Mr. RUMSEY—As the chairman of the Committee on the Powers and Duties of the Legislature has stated, this section was prepared with a great deal of care, and the object of it was to take from the Legislature the power of directing the manner in which these claims should be adjudicated. To my mind the chief value attached to this section is that it makes specific provision for the manner in which these claims shall be disposed of, independent of any action on the part of the Legislature. We know that so far as the Legislature has obtained an evil reputation, it has arisen principally out of these private claims. It has come from the fact that they have been pressed unreasonably to dispose of these claims in a manner not according to the ordinary course of the disposition of claims as between the State and its citizens, but in accordance with the rules which prevail between individual and individual. If we strike out of this section the provision which is made for the manner of disposing of these claims and leave it to the Legislature to direct the manner in which these claims shall be adjudicated, we leave it subject to the same pernicious influences with regard to the particular manner in which these claims shall be tried and disposed of, which now exist. One of the benefits which we expect to derive from this section, is that the judges shall inspect the premises and determine partially at any rate, from their own knowledge and good common sense, the actual extent and value of the injury and all the actual circumstances connected with the locality of the claim. Another, and in my judgment far more important provision is that they shall decide those claims according to the rules of law

as applicable, in the old fashioned times, between the State and individuals, or, in other words, no other liability shall be charged upon the State than such as the rules of law charge upon it and make it a fair legal or equitable claim. That they shall not take a pretense of a claim, and say that it shall be passed upon and adjudicated in such a way as to make it a legal claim. And the very object of this section was to get rid of any action by the Legislature which should give credit or character to those unfounded claims, as they have heretofore given credit and character to a very large number of claims which have been already fully satisfied by the State, or where there was no well-founded pretense that a legal or equitable claim existed against the State. That is the object of this provision in this section; and I tell you, Mr. Chairman, if that is stricken out, I have no desire to retain the section at all, because I want to place these things entirely beyond the reach of the Legislature, and in some way to provide here for the manner in which they shall be disposed of. If this is not to be done, I prefer to leave the whole matter to the Legislature, as it is now left.

Mr. E. P. BROOKS—It is provided by statute that the canal appraisers shall personally view the premises on which damages shall be claimed, at such times and places as they may deem necessary, and as near the vicinity of the premises as convenient. It is further provided by statute that it shall be the duty of the canal appraisers to decide upon claims for damages, from the information obtained by them from viewing the premises, and from the evidence received by them from witnesses. I regard that provision as a very desirable and important one, indeed, as the only salvation of the State against the extortions of the numerous claims presented year by year. If it were not for that provision of the statutes, and if the canal appraisers were obliged to decide cases upon the testimony of witnesses adduced before them, it would hardly be competent for any Legislature to pass a tax bill sufficiently large to pay the claims that would be allowed. It is no uncommon thing for canal appraisers to go into a neighborhood to assess damages on farming lands, and to have witnesses, apparently honest farmers of the neighborhood come before them, and swear that such lands are worth from two to three hundred dollars an acre for farming purposes, and unless the canal appraisers are a great deal more stupid, or a great deal more dishonest than men ordinarily are, they could not be made to believe, upon inspection of the premises, that the land claimed to be damaged was worth half that sum; although, as has been said, this is proper matter for legislation, I would not confide it to the Legislature. I would make it the duty of the court, as provided in this section, to personally view the premises. I would not allow the court to say, "Well, this is a hard road to reach the premises, and an inconvenient place to try the case." I would make it their duty to go to the spot, and carefully examine the case, and I would also make it their duty to value the premises and estimate the damages from their own examination as well as the testimony of witnesses. In my judgment that is the only safety, or the great-

est security the State has, against cupidity—I will not say dishonesty—of claimants; every man is naturally desirous, if he has a claim against the State, to get enough, at all events to pay his counsel and the expenses of getting his claim through the Legislature. While I am up permit me to thank the gentleman from Lewis [Mr. E. A. Brown] for the kind manner in which he has spoken of the present board of canal appraisers. In so far as the claims over which the canal appraisers have jurisdiction are concerned, I do not believe a better mode could be devised for disposing of those claims than that which has existed for over thirty years provided for by the board of canal appraisers. And, as has been remarked by the gentleman from Cayuga [Mr. Rathbun] the Canal Committee have already introduced an article in which they propose to abolish this board. That leaves numerous claims yet undecided against the State, and those which may arise in the future, without any provision for their adjudication; nobody to take charge of, or have jurisdiction over them. Some tribunal, then, must be created to dispose of these cases, and can it be better created than in the mode provided for by this committee? In my judgment it is a most valuable contribution to the Constitution that we are about to adopt. I hope this provision for personal inspection will be retained.

Mr. BECKWITH—When I addressed the committee before, I intimated that I should be in favor of striking out this provision from this article of the proposed Constitution. But on reflection, and on calling to mind some experience I have had on the subject, I believe it is well to retain it in the provision that the court may go and examine the damages complained of, and that they may take into consideration, in coming to a conclusion, what they shall thus learn by their own observation. The reason I have come to this conclusion is this: I recollect of one case that a law was passed by the Legislature referring a claim of a good many thousand dollars to commissioners to settle, in regard to the Clinton State prison. I recollect also that the gentleman's partner was opposed to me as counsel at that time—I mean the gentleman from Essex [Mr. Hale]. I recollect that those commissioners were authorized to inspect the property. I remember also that the testimony of witnesses was taken, and if the cases had been decided on the testimony of those witnesses, probably four or five times as much damages would have been allowed as were in fact allowed. In that very case, by their view, thousands of dollars were saved to the State, because the commissioners had power to go and inspect the property for themselves and to act upon their inspection as evidence. I think myself that it is a wise provision that this court shall in cases of this kind, where a claim for a large amount of damage is made against the State, have the power to make an examination on the spot, so far as they can, of the damages which the person has sustained. My own experience as a lawyer satisfies me that much good may result from such a course. I recollect once being a referee in a case where the question arose what was the rent of a certain piece of land. The testimony of witnesses av-

eraged from twenty-five dollars per year up to one hundred and twenty-five. We who are accustomed to try cases in court, where witnesses are called up to fix the amount of damages, which is a mere matter of opinion, understand that the party interested will subpoena those witnesses who think as he does, his particular friends, while the other side will procure witnesses who are favorable to his view of the damages. Under these circumstances the State cannot be fairly represented before a court without some one whose duty it shall be to act for the State, and proper pains would not be taken to secure witnesses to show the actual damages, and only those witnesses who are favorable to the party claiming the damages would be present. Unless the court views the premises, and looks to the subject in their own person, the State might suffer great damage. I am, therefore, on the whole, in favor of continuing in the Constitution a provision of this kind, that a board may at least go and examine for themselves.

Mr. BALLARD—I would inquire if the question now before the committee is for the reconsideration of the vote?

The CHAIRMAN—It is.

Mr. BALLARD—I hope this motion may prevail, for I am satisfied from the expression of gentlemen on every hand that it was not fully understood. I, for one, consider this provision as one of the most salutary provisions that could be put into the Constitution, in regard to this subject. I, therefore, hope this motion will prevail.

Mr. WAKEMAN—I think my colleague from Niagara [Mr. Bowen] has given a reason why this question should be reconsidered. He said he did not propose to strike out that portion of the second section of the report embracing what is called statute of limitations, and why not? why not let the Legislature pass upon that as well as the other, if it must be left entirely to the Legislature? There is no reason why we should not trust the Legislature to apply the statute of limitations as well in that as he would in the other case. And why should not we allow the Legislature to pass upon that point? It is, that year after year they have passed upon canal claims that have been in existence, if they had been in existence at all, more than six years. The older a claim the greater the chance of its success, and yet we are disposed to allow the Legislature to say whether that principle should be applied to claims of this character or not. Every gentleman on this floor, I presume, will say at once it is right and proper to apply the statute of limitations in favor of the State as against these claims. There is no gentleman on this floor who will say it is not right to apply it. If it is right, then let us apply it right here and make sure of it for the next twenty years. On the other point, is there a gentleman here who doubts the propriety, not only of allowing, but of making it the duty of the court of claims to go over the grounds and examine in reference to the damages, and the payment of claims growing out of the damages, to real estate? I have not heard any one gentleman here say that he is not in favor of such a provision as that. If so, why not then

place it right here when we are creating a new court unknown to the common law, why should not we place it right in the Constitution and make it a part of their duty to make an examination? The gentleman from Chemung [Mr. E. P. Brooks], who addressed us a few minutes ago, and who has been a canal appraiser, has given us his experience. He tells us that the State has saved hundreds of thousands of dollars by that very provision. Gentlemen say that the Legislature may, and will, provide for this. Perhaps they will, but if we provide for it now we shall have it, and there will be no mistake about it. What propriety is there in leaving it to the Legislature? If it was a matter of doubtful propriety, if we were not satisfied that it is right and proper to have this adopted, then I say it might be properly referred to the Legislature, and if it did not work well they might repeal or modify it. But upon points where there can be no two sides, let us fix it beyond all doubt. Therefore, I am in favor of the reconsideration of this vote. I am in favor of putting in the word "shall" instead of the word "may." Make it a part of the duty of the court to go and examine where the claim for damages to real estate is made. Do not let us be afraid of this legislation. It has been necessary for us to legislate on this very point. We are legislating out of existence, substantially, the canal appraisers when we establish another court. Let us, on points where there is no disagreement as to what they should do, apply this principle. The gentleman from Erie introduced an amendment requiring the court to find the facts, and there would have been considerable propriety in this. The fact is, what was asked for was a matter of common sense—that in reference to these claims the court should find the facts and state on what basis they allow or reject this or that claim. Then the people and the persons interested will understand whether or not it was properly rejected or properly allowed, and the court of appeals would have something to pass upon by way of review. In a case where the statute of limitations is so important as in this let us make it safe now right here, and put it in the Constitution—

Mr. GRAVES—Do you believe it is proper and right that the State of New York should apply the statute of limitations to an equitable claim against it?

Mr. WAKEMAN—I do. If a man will sleep on his rights for more than six years, the statute of limitations is applied, and I do not see why it should not apply as well to the case of a State as that of an individual. Now, there is no legal or equitable claim against the State which can be enforced at common law, and we are creating a tribunal whereby these claims may be adjudicated. I ask gentlemen why not apply the statute of limitations? It says to you: "Prosecute your claims while witnesses are alive, while the State can defend it; otherwise you shall not have the privilege of going before the court of claims at all." Apply the same rules to an individual that you would to the State, and apply the same rule to the State that you would to an individual. We have a statute of limitations applying to equitable claims. Apply the

same rule in reference to cases where the State is a party, but especially so when we propose to allow individuals to go to the courts and apply for a redress of grievances as against the State. Now, I hope the motion to reconsider will prevail, and that we shall adhere as closely as we can to the report of the committee. They have given it an examination; one section bears upon another; and I trust, because this committee have labored on this subject and given it their undivided attention, we shall not undertake to tear it down. Heretofore, it seems to have been the case that whenever we found a report made by a committee, who are unanimous in their opinion as to a provision, we at once attacked it because it has been given that full consideration. If there is anything valuable here, do not let us go against it because the committee have considered it and passed upon it. Let us adopt it. Let us reflect for a moment that the committee, in their various consultations and meetings, have had an opportunity to examine the subject, and have been anxious to make a report which would be acceptable. They have given it more consideration than we can by a mere casual glance at a single section.

Mr. CHESEBRO—Will the gentleman allow me to ask him a question?

Mr. WAKEMAN—Certainly.

Mr. CHESEBRO—Does the gentleman mean to say he will vote in favor of all majority reports?

Mr. WAKEMAN—No, sir; I mean to say I would not vote against it, because the committee were nearly unanimous in making it.

The question was then put on the motion to reconsider, and it was declared adopted.

The question was then put on the amendment of Mr. Bowen, and it was declared lost.

Mr. FERRY—I offer an amendment.

The SECRETARY proceeded to read the amendment, as follows:

Substitute for the entire section:

"The Legislature shall provide by general law for the hearing and adjudication of all such claims and accounts, by some or all the ordinary courts of law and equity, upon such terms and under such restrictions as may be prescribed by law."

Mr. FERRY—I do not pretend to be very familiar with the examination of claims of this character, as I have never lived in a section where they have been frequent, but I cannot see why, if the State owes me a debt, she should not pay me, just as an individual or an ordinary corporation should pay me if similarly indebted. If the State should do mean injury, it should make reparation as an individual or an ordinary corporation should, and I can see no good reason why the ordinary rules of law and evidence should not be as available in the one case to elicit truth, as in the other. I do not know any reason why the safeguards which we have provided, to determine the question of right between individuals, are not as potent, safe, and equally available in a case where the State is a party. I have heard it suggested that juries could not be trusted to decide in respect to claims of this character. Perhaps this may be so, and it may be necessary to provide for such cases; and if this Convention should be of the opinion that some further safeguard is necessary in order

to promote justice, it will be seen that I have added a clause, that the Legislature may prescribe such safeguards and conditions as shall be concluded necessary in order to secure justice. This simple plain statement of the case to me looks as though it must be fair and impartial. I can see no reason why it is not so, and if any gentleman has a different view I should like to hear it expressed, and the reasons stated why the rights of the individuals, when the State is a party, should not be determined by the same rules of law and evidence as in the case of a litigation or controversy between an individual and an ordinary corporation.

Mr. CHESEBRO—How do you provide for any examination by the court of the premises in question?

Mr. FERRY—It would not be possible for an ordinary court so to proceed, but such court would have to depend upon witnesses. But even this matter might be provided for by the Legislature, as might other supposed objectionable cases. Suppose, for instance, there was reason to apprehend that suits would be commenced in localities where injuries complained of arose quite remote from the residence of the Attorney-General, who has charge of these matters, then the local district attorney could be employed to attend to the business, or it might be enacted that the venue, or place of trial, should be at a stated place; for instance, at Albany, or wherever the Attorney-General lived. Provisions of a similar character might be made for the inspection of any injury or any damage resulting from any alleged injury to real estate, or the court could designate a commissioner to proceed and examine the premises and take the testimony of witnesses in the locality.

Mr. SPENCER—I understand that the gentleman from Ontario [Mr. Chesebro] seems to suppose there will be no other claims against the State except those which arise from injury to lands or premises, and, therefore, it will become necessary to view those premises for the purpose of determining damages. Now, I suggest there is a great variety of claims which may arise against the State, and that in regard to those claims there should be a difference in the mode of ascertaining their justness and deciding upon their validity. For illustration: it has been proposed to build a capitol for the State, and under the authority given for that purpose the State will make a contract with some person for its construction. The question may arise upon its completion as to whether the work is performed according to contract, and the State may resist the payment upon the allegation that it was not properly done. That is precisely such a claim as arises between individuals where one contracts with another to construct a building. I submit that no such claim as that should be suffered to rest in the discretion of three men who are appointed to protect the interests of the State instead of fairly and equitably adjudicating as between man and man. The other kind of claims against the State arise out of its condemnation of its own property for its own uses, that is, its exercise of the right of eminent domain. In that case the proceeding upon the part of the

State always has been to condemn the property and appoint its own officers for the purpose of ascertaining the damages which have been sustained. That requires a different mode of proceeding; but it does not require the intervention of a jury, although the State might authorize a jury to adjudicate upon it. The State takes the property because it has a right to the property, and it makes compensation because it is just. The reason why the State cannot be sued according to the principles of common law, is because the State in its sovereignty and its attributes of justice is supposed to do just what is right, and nothing more. But this theory in regard to sovereignty of the State, has been entirely subverted by the section which has been last adopted. Therefore I submit, that at least in regard to those claims against the State, which rest upon the same principle as those which arise between individuals, they should be determined in the same manner. There is no reason why, if I have a legal claim against the State for services performed by me, I should not have the right of trial by twelve men, equally as if I performed the service for any individual member of the State. For these reasons I shall vote for the amendment proposed by the gentleman from Otsego [Mr. Ferry]. Not that I believe it is right in its application to all claims against the State, but for the purpose of having the question presented in such a manner that an amendment may be made so as to provide for the proper adjudication of claims differing in character and nature, in these different modes.

Mr. RATHBUN—In the history of this country there never has been a time when any individual could bring an action against the State. The damages claimed for lands taken up on the canals, or for water taken from individuals for the feeding of the canals. All those things have been appraised by appraisers appointed by the State, and adjusted in that way. No man could ever bring an action against the State. The proposition is on the part of the Canal Committee, to get rid of this board of canal appraisers, and the committee whose report is now under consideration, have attempted to provide a different forum, in which the things heretofore and now done by the canal appraisers, and by the various other officers of the State, could be performed by this tribunal. I believe it is more just toward persons that an opportunity to try and determine upon private claims, would be upon a safer, sounder basis; for this court would be bound to guard the interests of the State, to the utmost extent, and not to wrong anybody. They would be appointed for the purpose of trying and adjusting claims. They would be willing to do justice between the State and the individual. There was no desire on the part of the committee but that the court should be a just, independent and honest court, doing justice between the individual and the State. It is proposed now that the courts of the State shall be thrown open to individuals who have claims against the State, and that the State may be sued in every county, issues made up, put upon the calendar, and tried as between man and man. What a figure the State of New York would cut at the court-houses!

A dozen circuits would be running in the State at the same time; the State must have a dozen lawyers to defend it in the dozen courts, in what would prove disastrous trials to the State. Who is to find the witnesses? Who is to prepare the cases for trial at the court? The jurors are the neighbors of the parties bringing the action; they are the parties having claims like those upon which they sit as jurors. You will find the State, instead of being improved by this condition of things, would be thousands of dollars worse off than it has been in the last few years, when it has been robbed by its public officers. Better leave it alone, better leave men to plunder and rob, and divide, than throw open the courts and let everybody sue the State. I apprehend that the proposition will find no favor in this body. It would be suicidal. The State pursued this policy in regard to prisons. Agents were appointed in behalf of the State in the management of the prisons, to do all the business and to make contracts for labor, contracts for supplies, and contracts for various things to be done for the State at the prisons. The agent was given the right to sue, and the right was given against him to be sued by individuals. What was the result? At Sing Sing there were actions brought, and recoveries had of at least forty thousand or fifty thousand dollars. At the prison at Auburn, actions were brought to recover for the labor of the convicts and the State was defeated in almost every case, just as certain as the action was tried. There was not a claim for labor that was worth a straw. Contractors could prove more damages always than the labor of the convicts was worth, and could always recover in such suits. That system went on for a few years, until the State was becoming bankrupt, when the law was repealed. The right to defend an action against the State, by setting up by way of set-off, any demand whatever, was taken away from the party. Why? Because it was impossible for the State to survive and allow that thing to go on. The proposition here is that all claims may be sued by the individual, and the State brought to trial as defendant, and the cases to be tried by juries. The next thing would be judgments and executions levied upon the capitol, upon canals, upon everything that belonged to the State, and there would be no place for the Legislature to assemble. They would be sold out, body and breeches. There would be nothing left. Aside from that, the idea of the State of New York being sued by a man upon a claim of one hundred dollars, or five hundred dollars, or even five thousand dollars. It would be absolutely ridiculous; it would be bringing down the State to the condition of a litigating, wrangling, dishonest party, assailed by everybody, charged with dishonesty everywhere. The State, sir, is to be dragged into courts and disgraced, the people are the State. The reputation of the people is involved in all this litigation; they are the real defendant; they alone suffer in purse and in reputation. I trust this proposition will not prevail at all. By this article it is proposed to concede that parties having claims which cannot be adjusted by the officers authorized by law, shall have the right conceded to them to come before a tribunal established of competent and honorable men, and

have their case tried before these honorable judges, fairly and honestly without a jury, and to have justice done according as they shall deem right and proper upon the whole case. It is by concession and by a single tribunal to investigate and adjudicate and determine between the State and these persons, so that justice may be done to them, and not injustice done to the people of the State. It is a concession, the whole extent of it is concession, otherwise they must apply to the Legislature, and if the claim is a large one, the passage of a bill by the Legislature is obtained by some means; and it is said that these means are very often unjust and improper. That idea has produced this result. It has produced this report now before the committee which is to obviate, and get rid of the charges which have been made and to redeem the character of the State, redeem the character of the Legislature and bring both up to the standard formerly occupied, and which the State should always occupy, ready and willing to meet and adjudicate fairly and honestly before a fair tribunal, the claims of the people against it, and when they are adjudicated, to pay them.

Mr. ANDREWS—The question now under discussion is a difficult one, and the committee are certainly entitled to great credit not only for the able report which in general they have made to this Convention, but for the thought and the attention which they have bestowed upon this particular subject, one which has doubtless occupied the thoughts of most of the members of the Convention. The committee, in the provision for a court of claims, propose to surrender the principle that the State shall not be legally liable for any claims in behalf of any of its citizens. Practically that has been done by legislation heretofore. According to the view of the committee, the establishment of a court of claims with the authority to prosecute in that court claims of any character, is, of course, a full surrender of the principle to which I have adverted. But, sir, I do not feel satisfied that it is safe or desirable to establish an independent court of claims for the adjudication of matters of that description. I am satisfied it would only be proper to do it, by making it a court of the highest and most dignified character, especially when there is to be committed to it the high and important interests which this section proposes to confer. Because, unlike proceedings in our ordinary courts of justice, the decision of this court upon a question of fact as to the extent of damages in a claim against the State, is to be final and conclusive against the State, and is subject to review in the court of appeals only upon questions of law. Now, it is certainly a somewhat startling proposition that the vast and important interests of the State or of citizens against the State in respect to claims, should be left to the final and unappealable arbitrament of three judges, without the power either in the Legislature or in the courts to review the decision of that tribunal upon any question of fact, upon which they may have passed. But, more than that, I am unwilling, for one, to commit such a discretion to such a court, without investing that court with all the formality which attends proceedings in any court of justice.

I think it would be extremely dangerous to create a migratory court with power of going from one part of the State to another, visiting this locality and that locality, and conferring with parties who may be interested in the prosecution of a claim, and under such influences, to leave to that court the final and absolute determination of questions which are to come before it; and although I can see very clearly that often there would be a great advantage in allowing the judges who are to pass upon such a question, the privilege of a personal inspection of the premises, with reference to the damages claimed, still I fear that an imperative injunction of this character in all cases would be open to very serious difficulties, and that, unless that court were of the very highest character, the State might at times be subjected to great injustice. The board of canal appraisers, as now organized, have no power of final adjudication against the State. In my judgment, if we open the door to this species of litigation, the prosecution of these claims in the ordinary courts of justice is altogether the safest and the best. I understood the gentleman who last addressed the committee, to state that the prosecution of a State was unknown in this country. On the other hand, I have before me the Constitutions of several States, Pennsylvania, Indiana, and Illinois, in which the power on the part of a citizen to sue the State in the courts of justice of the State is given. Moreover, I do not indulge in the apprehensions which gentlemen have expressed, that an ordinary court of justice would be an unsafe tribunal for the determination of such question, because I believe that the experience of the past has demonstrated that there has been no means found better adapted to determine controverted facts than through the procedure and forms of common law tribunals, before a common law jury. I am not ready for one, to believe that this same method of investigating the truth and reaching justice would not be as applicable to litigation between the State and its citizens as it is between the citizens themselves. The great danger and difficulty which has heretofore existed, as I understand in the board now existing lies precisely here: secret tribunals are organized and investigations are conducted apart and away from public observation, where only the party interested on one side ordinarily attends, while the State is represented not by the Attorney-General and seldom by any other competent attorney. The danger and fault has been, that in this method of investigating and determining claims against the State, the officer charged with the duty of representing the State has been less vigilant, less sensitive to public opinion than if those investigations had taken place in the light of day in the presence of citizens.

Mr. COOKE—Will the gentleman allow me to ask him a question?

Mr. ANDREWS—Yes, sir.

Mr. COOKE—I wish to inquire whether an individual can have a legal cause of action against the State of which a common law court can take cognizance?

Mr. ANDREWS—The jurisdiction of an action against the State is proposed by the amendment

to be conferred upon the common law courts, and of course the method of procedure and trial in that action, under the new jurisdiction, would be according to common law rules.

Mr. COOKE—I am speaking of a cause of action, without reference to this court.

Mr. CHESEBRO—If I understood this proposition in the light of my friend from Onondaga [Mr. Andrews], I should be rather disposed to concu with him in the views which he has expressed. I am not in favor of surrendering so much of the sovereignty of the State as to allow the State to be brought into the courts and litigated with by claimants and suitors. I do not understand this proposition of the committee, as contained in this section, to contemplate any such thing. As I understand the proposition, it is simply to provide a tribunal before which claims against the State shall be tried and adjudicated, in lieu of those which now exist, or the one which now exists—the one before which the numerous claims for canal damages are tried and appraised. The section struck me with favor for the reason that it protects the State as the State has not been protected; that is, it provides that the State shall be protected in the investigation of those claims by an officer charged with the responsibility of looking after those interests before that tribunal. As I infer from what my friend from Onondaga says, his construction is that it puts the State in the position of being sued and judgment recovered and recorded against it. Therefore, it reduces the State to the level of the suitor in the courts. And such is to be the effect of the amendment of the gentleman from Otsego [Mr. Ferry], if it should be adopted. I do not understand that to be the purview of this provision at all. It is, as I understand it, the simple organization of a tribunal before which claims against the State shall be tried and adjudicated, and before which the State shall be represented by an officer charged with protecting its interests. That is all. No judgment can be entered upon the order of this court against the State.

Mr. ANDREWS—The gentleman, I think, will see by the provision for the appellate jurisdiction of the court of appeals, that it was the intention of the committee to allow judgment, and of course to render essential some provision for an appropriation to be made.

Mr. CHESEBRO—I do not so understand it. To be sure there is a provision by which the court of appeals may review, upon questions of law, the findings of this court of claims. But there is no provision (and I think this committee have been sufficiently minute, and if they had intended anything of that kind, they would have inserted it), by which judgment can be entered against the State, nor can any payment of the awards by the court be made, except by action of the Legislature by appropriation. I regard this simply as a substitute for the present canal appraisers, so far as that class of claims are concerned, and I think, myself, it is a provision that commends itself to the consideration of the committee, and one that should be adopted. The question I put to the gentleman from Otsego [Mr. Ferry], has more point to it than has been given, either by himself in his answer, or by my friend

from Onondaga [Mr. Andrews]. It must be conceded if the class of claims arising against the State for canal damages are to be referred to this court of claims, that it is absolutely essential that this court should examine the *locus in quo*, to see whether the witnesses give a correct statement of the damages or not. One of the present board of canal appraisers [Mr. E. P. Brooks] has already told us that there was an absolute necessity for this visitation on the part of the court to the premises, to see whether the damages are truly given.

Mr. FERRY—I would inquire what objection there can be under the resolution I have introduced where the power is given to the Legislature to allow the jury to proceed to the premises and make a personal inspection.

Mr. CHESEBRO—None whatever; but suppose a man in the county of Albany brings an action against the State before this court of claims for damages in some other part of the State along the line of the canal. He lays his service here; he has a right to a trial here. The result is, you must transport the jury from Albany to wherever the premises are situated, for the purpose of viewing the premises to see whether the damages are stated correctly by the witnesses. The difficulty in transporting twelve men might be very great, when these three judges would be amply sufficient.

Mr. A. J. PARKER—It seems to me, Mr. Chairman, to be utterly inconsistent with the idea of the sovereignty of the State, that it should place itself in a position to be sued at all. It would be a new feature I think, entirely, if we should adopt either the plan proposed by the gentleman from Otsego [Mr. Ferry] or the one reported by the committee. The theory has been in this country, that you could not sue a sovereign State; you could only petition for payment. Now this stands in my way of approving of either of these plans, and I am inclined to believe myself that we had better leave the matter as it is. I do not at all like the idea of creating a new court with its solicitor and all the paraphernalia that belongs to a court; I do not believe it is necessary, in amending the Constitution, to add officers to those that are now deemed to be necessary to discharge the public duties of the State. I believe we have enough already. It is said the appraisers are now discharging their duties very satisfactorily. I would leave them to continue to do so. But the radical objection, I think, to any action upon this subject is, you cannot establish a court or open a court to any suit or in which a suit may be brought against the State, without surrendering the sovereignty of the State to that extent. It is said a court of claims has been established by the general government at Washington, but it is in truth a mere court of inquiry. It renders no judgments. It pronounces no decrees that are conclusive upon the government, and therefore the sovereignty is not surrendered. It is a mere reference for investigation and is afterward acted upon by the government itself in Congress. But that is not what is proposed here. It is proposed to create a court of claims, whose decision shall be final, and after that decision shall have been made the Legislature has no power

except to make the appropriation. It is virtually a judgment, call it what else you will; it is a final adjudication of the claim; unless there be some question of law, upon which you can remove it to the court of appeals, it is conclusive, and then the court of appeals renders a conclusive judgment against the State, and the State reserves no right to review it; it has only the power through the Legislature to make an appropriation to pay it. I doubt very much the policy of establishing such a court, and I doubt equally the propriety of opening the courts to allow any suitors that please to sue the State, to make the State defendant, to obtain a compulsory judgment against the State, and of course to be entitled to satisfaction in some form. It is too hazardous an experiment; it is surrendering too much. We had better let well enough alone. If there is danger of the Legislature going too far in allowing claims, throw safeguards around it; watch carefully and limit and restrict the power of the Legislature in its action. Subject the claims to any test you please without depriving the State of its power or sovereignty. In this view, therefore, although I had some doubts at first when the proposition was presented, I shall be bound to vote against any proposition of this kind, and in favor of striking out the section, if such an amendment is made.

Mr. T. W. DWIGHT—It seems to me that there are only two questions of importance connected with this subject. One of them is whether we shall have a court of claims, and the other, whether its jurisdiction shall be fixed in the Constitution, or whether it shall be left to the Legislature to modify its jurisdiction and change it from time to time. Now, in regard to the first point, whether we shall have a court of claims at all, I do not feel the pressure of the objection which has just been stated by the gentleman from Albany [Mr. A. J. Parker], for I recall the fact that we are endeavoring to do but very little more than what the common law has done from time immemorial, and it may not be out of place in this connection to state what the rules of the common law are on this subject. Now, it was the theory of the English government that the king could do no wrong, and therefore, whenever an act which appeared to be wrong was done by him it was supposed that he was desirous to have that wrong rectified. He had an officer, the Lord Chancellor, who was the "keeper of his conscience." He was supposed, therefore, to have submitted to this person who thus guarded his conscience the adjudication of this class of questions, as to whether he had done wrong or not. Now, while this was the theory of the English law, we all know very well it was a fiction for the purpose of accomplishing a great object, so that it happened there could be a presentation of a claim made by a citizen against the crown, or, as we understand it, the State. There could be a special presentation in two modes, one by what was called a petition of right, where the facts were necessarily set forth in the petition, and the other by what may be called a show of right, or, in the old Norman French, *monstrans de droit*. Now, in whichever way the claim came up, it was determined by legal principles. Something like an issue was

framed, a demurrer, or an issue of fact as the case might be, so that the question could be tried. This matter was in the control, as already stated, of the chancellor, not in a court of equity, but on the common law side, as it is called, of the chancery court, and the chancellor was not permitted to try cases himself on the common law side of the court. There must be a trial by jury. When we came to adopt the English chancery system, we simply adopted its jurisdiction as a court of equity, and dropped out the common law jurisdiction of the chancellor, and in that way it happened we never had the petition of right or the other mode, I have explained. If we had adopted the chancery court in all its fullness, we should have had, as part of our law, these two modes of trying questions in regard to the right of the subject as against the crown. Consequently I do not see that there is anything demeaning on the part of the State to permit itself to stand in the position that the common law has recognized, that the crown or the State might stand. So that perhaps without fully comprehending this matter, the committee has really pursued the course of the common law in organizing this court. It has provided that there shall be a court of claims, except that they provide there shall be a trial without a jury, while the common law requires there shall be a trial with a jury. An appeal was taken from the decision of the chancellor to the court of king's bench, in this class of cases, just in the same way as an appeal is taken here from the court of claims to the court of appeals. Now, sir, in regard to the other point; shall we fix the jurisdiction of the court in the Constitution? That is a point upon which I admit, I have great doubts. I observe the language of this clause is very broad. It says this court shall be governed in its adjudications by the legal rules which have heretofore existed between the State and its citizens according to the course and practice of the common law. Now, if I understand that language, it admits of the rules of common law to be applied to the State in the same way as they would be applied to an individual. Take an instance which perhaps will illustrate the difficulty—

Mr. RUMSEY—Will the gentleman allow me to ask him a question? A different rule prevails between the individuals than that which exists between the State and its citizens, does it not?

Mr. T. W. DWIGHT—I understand the committee proposes to make the same rule.

Mr. RUMSEY—It proposes just precisely what it says—that the rule which has prevailed between the State and its citizens shall exist, and did not intend and does not throw open the question as broad as you anticipate it.

Mr. T. W. DWIGHT—I understand that the State can by common law sue its citizens in its courts, and, therefore, if this section be adopted, the process will simply be reversed. I think the meaning is that the citizen can sue the State in the same way that the State can sue the citizen. You have simply to reverse the action. So, if a citizen can sue the State for negligence then the State can sue the citizen for negligence.

Mr. RUMSEY—May I ask the gentleman

whether he infers from that language that the rule is reversed in any way?

Mr. T. W. DWIGHT—No, sir. I understand this, however, that in order to determine whether jurisdiction exists you can inquire whether, under the same class of cases, the State could sue the citizen, and if it could in that class of cases the citizen could sue the State. So that, for example, if a man is driving over a canal bridge and he should be injured in any way by the falling of the bridge the question would immediately arise whether the State would not be liable by reason of the negligence of its officers for any injury he might sustain. I do not say it would (because that is a question for the court), but certainly that question would arise; for if, as must be conceded, the State can sue the citizen for injury to its property, I do not see why, under this section, the citizen could not sue the State for injury to his property; therefore it opens a wide field for discussion and litigation, and it seems to me unsafe to fix this jurisdiction in the Constitution, at least in its present terms. Let us leave the whole matter to the statute-book, and if it does not work well it can be changed. While, therefore, I do not see any objection to establishing the court of claims, I think it would be the wiser course not to fix its jurisdiction specifically in the Constitution.

Mr. BALLARD—Let us leave the imaginary and come down to the actual, and we shall begin to see where the merit in this whole amendment rests. It must be conceded on all hands that the bulk of the claims that come before this court arise along the line of our canals, and I understand that the claimants who, from year to year, for the last ten or twenty years, have presented themselves before these appraisers, the canal board and the Legislature, compose a body of men that for sagacity, for power of combination, for persistence in efforts, have never been excelled in this State; and you may say even the sharpness of Wall street is in its A B C, comparatively; and the condition of the State, to open this door, as has been proposed in this amendment, and to leave at loose ends, the condition of the State, exposed to be sued, would be well illustrated by the old poetical snatch—it would be like a bundle of hay between two asses, and those parties having claims up and down the canals would be the asses to pull at it, and there would be no way of resisting the continued claims, in amount and in number, that would be sued. If every member of this Convention would go to the canal appraisers' office and look at the records there, if they go to the canal board and look at the records there, or if they look at the statute book, they would begin to see how many thousands of dollars have been saved to this State, arising from that single provision requiring the canal appraisers to view the premises, and act upon their own judgment, in conjunction with the evidence which had been taken before them. Now, then, this is a peculiar case—that is, it relates to a peculiar class of claims that would come before this court. They bear no analogy to the ordinary suits in courts. They are not, as a general thing, prosecuted by the original person damaged, but they are bought up by the speculators living up and down the canal. They

fall into their hands, and they are the parties who prosecute them in the Legislature or before the canal appraisers or the canal board. They are bought up, and the influences are combined to bring about the results they are desirous of producing. The only safety for the State, in my judgment, is to preserve the features which now exist in relation to the canal appraisers, and to have the court of claims which shall represent the State, and whose duty it would be to view the premises and exercise their own judgment in regard to the merits of those claims. Without that the State would be exposed in a manner that would be without precedent, and would be disastrous in the extreme. Now, I have great respect for the judgment that has been brought to bear on this provision; and I think it would be a most dangerous experiment for us to depart from this plan. We should preserve the court of claims or the canal appraisers. The court is the best. We should preserve the feature that they should view the premises, and it is not necessary that we should superadd to it a trial by a jury, because our experience tells us that the action of the canal appraisers for the last ten years, to say the least, has not been complained of. They have administered their duties well, and they have stood impartially between claimants and the State. So, in like manner, this court of claims would stand. I think there need be no apprehension on this score, but to interpose the right of trial by jury, and let our thoughts run into the field which would be opened, if this amendment is to prevail, to have a trial by jury of all these claims, varying in amount, twenty, or fifty, or one hundred, or a thousand dollars would be establishing a provision that has not been called for hitherto, that there has been no complaint about in the State. No one ever heard of that, that I am aware of. We have no such complaint. Hence, it seems to me, the establishment of a court of claims, without a jury, is all that we need to preserve the rights of claimants and the rights of the State. I do hope this article in its essential features, may be preserved, and not dispensed with.

Mr. KERNAN—This, in my judgment, is a very important question. It doubtless deserves all the consideration it has received. Now, first, I presume it will be conceded, and I think it should be, that the State should not subject itself to be sued in the ordinary courts of law. I think that would be very unwise. I cannot believe that there can be any argument made against that proposition. It would lead to expense, difficulty, and I think great wrong upon the State. But nevertheless, inasmuch as the State does not permit itself to be sued in the courts, and inasmuch as there are many claims made against it which the citizen should have a right to establish, if he fairly can, it seems to me it is the duty of the State to establish some safe and fair tribunal, where it will permit the citizen to produce his claim and prove and establish its justice if he can. At present those claims must come before the Legislature which is not well constituted in any sense to do justice either to the State or to the individual, which is not constituted properly to try and decide, which cannot conveniently

hear evidence, cannot view the premises, may be imposed upon, may be affected by improper influence on the one side or the other; and therefore the mode of gaining redress existing now is neither a good one for the citizen, or a just one for the State. Hence, there should be something else than that tribunal for the adjudication of these claims, in my judgment. We have also another tribunal, the canal appraisers, which substantially, to a limited extent, answers the purpose of the tribunal proposed by the committee. Now, sir, it seems to me that this committee in the scheme they have recommended or at least the object which they seek to attain (for I do not pretend to discuss the details of their plan, and I have not been able to bestow time, thought, or upon it), have proceeded in the right direction. The general idea which they propose to carry out, namely, that we shall establish a court of claims of three men to be selected by some competent and proper authority, who shall constitute a court in which persons having claims against the State may be heard, I think is a good one, just toward the citizen and more likely to protect the State against fraudulent and fallacious claims than having them go to the Legislature. Now, what is the objection to this? The State is not subjecting itself to the objection which was so forcibly and properly raised by the gentleman from Albany [Mr. A. J. Parker], that no State should permit itself to be sued by individuals. The State simply says, "We will not allow ourselves to be sued for reasons of policy and wisdom, yet as a State we do not mean to wrong or defraud any man; therefore we will constitute by law a tribunal of three men (if that be the number) which shall sit between the citizen and the State, and if it, on a hearing and examination under the guards and restrictions imposed upon it by law and the Constitution, decides that the State of New York owes this man, then we certainly ought to and will pay it unless our court of appeals will reverse that decision." Can anything be more just than this? Is it not right? Can any State stand up and say, we will not have some fit tribunal where the citizen, whose property, has been taken for the uses of the State, or who has suffered damage by the necessary action of the State, shall not be allowed to come and be heard, and establish if he can that he has a just claim against the State for compensation? I think, therefore, that it is wise and right to establish a tribunal other than the Legislature for the adjudication of claims brought against the State. I am opposed to the amendment offered by the gentleman from Otsego [Mr. Ferry], for I do not think it will do to subject the State to be sued in the ordinary way in the courts. I think very likely the effect of it would be to harass and wrong the State. We do not distrust the courts. But we know how difficult it would be to protect the State if it were subjected to be sued in such tribunals and in such localities as the party may select; and the very expense of defending the State would be like the expenses we hear of in trying to defend the city of New York from the claims brought against it in the courts, which mean to do justice, but where

it is difficult to have a defense always properly interposed. Now, sir, it is said we are increasing officers. Not so. We have the canal appraisers now, which to a limited extent answer the purpose of this very amendment. We do not increase officers, but we make a proper tribunal to adjudicate all the contested claims that are brought against the State, and I believe in making such a tribunal, imprinting its general features in the Constitution, and providing for such other regulations as may be necessary to accomplish the purpose, we shall have taken a step in the right direction, and cut off this evil of getting through the Legislature fraudulent claims by imposing on them, or delaying honest claims, which is sometimes the case, to the impoverishment and ruin of a man who has them against the State. I trust, therefore, we will be able, by the provisions reported by the committee, who so carefully considered them or by amending them if they do not meet the case, to provide for establishing a tribunal wherein claims against the State of New York shall be judicially considered by three men, selected, who will adjudicate as a court does, and I think it will be economy to the State, and an advantage to the citizens, and will promote justice and prevent frauds and fraudulent claims.

Mr. MURPHY—This is undoubtedly a very important, but I do not think a very difficult question. I do not concur in the view that the State should be allowed to be sued like a private party in our courts. The rule which prohibits the State being sued is found in the fact that the State does justice to her citizens, and has no motive to deny it to any of them. She provides by proper laws for the auditing of claims against her, and when a case arises for which there is no provision made by law, she passes a law by which they can be paid. She does not leave her creditors without the means of being paid; the creditors sometimes are not satisfied with the decision which may be made, and then they come to the Legislature as an appellate body, for the purpose of obtaining from the State in that way what they could not otherwise obtain through the ordinary channels provided by the Legislature to pay them. Now, sir, what is the object of the section which the committee has proposed? It is to relieve the Legislature from these claims, and for several reasons. One reason is that the attention of the Legislature may be withdrawn from the consideration of matters not strictly legislative; another is that the claims may receive a more careful examination, and an opportunity afforded the State to present its side of the case properly. We have in the evidence which has been produced here, taken by the Senate Committee on the subject of the management of the canals, some exposition in this regard. The committee endeavor to obviate the difficulty, and they say instead of having the Legislature, this appellate body, let us put it in the power of another body, a court, to be called the court of claims. Well, now, in reference to the court of claims, what is it? What will it be? It will be nothing more than extending, as the gentleman from Oneida [Mr. Kernan] says, the principle of your board of appraisers

You have three citizens appointed of integrity and of capacity, to take the place of the Legislature in examining these claims, and to do justice, or rather equity, as between the State and the parties presenting those claims. Now, it appears to me to go further than that, if that be allowed, would be doing a wrong to the State. The theory upon which these claims have been rejected in courts of law as against the State is, as I have stated, that she does justice; and, sir, she does justice, in fact; and when she, through our Legislature, or through this court of claims, is willing to have this reviewed on certain principles, she does magnanimity as well as justice. I, therefore, shall vote against the amendment which has been proposed by the gentleman from Otsego [Mr. Ferry].

Mr. HAMMOND—I hope this amendment will not prevail, and that the article reported from the committee will be adopted. We have been much in want of some system for many years whereby the State could settle with the citizens for damages done. Men who have suffered small damages under the present system, have been unable to get their just dues. To illustrate, it would be perhaps better to state a case which came under my own observation. The canal appraisers have no jurisdiction to settle claims with citizens without an act of the Legislature authorizes it. Six years ago this month we had a flood on the Genesee Valley canal, and a break occurred in my neighborhood which damaged one of my neighbors very seriously. He came to me and desired that I should prosecute the claim for him. I applied to the canal appraisers to appraise the damages, and they informed me they had no jurisdiction in the case, that it required an act of the Legislature. The next winter I succeeded in getting an act through the Legislature to get his damages appraised. In a year and a half from that time I got the appraisers to appraise it. In one year and a half after that they made the award, and ninety days after the canal commissioners appealed from the award, throwing it before the canal board; not having over five days to get to Albany, I came here and had the privilege of having it tried before the canal board or referred back to the canal appraisers. I chose the latter, and had it referred back to the appraisers, and in July last I got that case before the canal appraisers again. Now, you can see readily that a man with a small claim could not go through with all this machinery to recover it, and the consequence is, there is no remedy for these small claims, and I hope this principle will be so adopted that the court will have jurisdiction in these cases and in such a way that men who sustain damages shall have their rights provided for.

Mr. DALY—I have read the section as reported by the committee, and bringing to its consideration many years of judicial experience and such legislative experience as I have acquired in the past years, I am of opinion that the section is a judicious one. I have not been impressed by any of the objections that have been made against it. In all well-organized governments provision is made for determining claims of this nature by tribunals partaking more or less of the judicial character. In France, an extensive organization

exists in respect to all claims against the government, reaching every case from the humblest inhabitant of the remotest village to the highest officer in the empire. A board, extensive in its organization, and minute in its ramifications, with many of the qualities and power of judicial tribunals. A similar provision exists in Great Britain. In neither of these countries are claims of this nature ever adjudicated in the ordinary courts of justice. The same may be said in respect to the government of the United States. A special court for this purpose has been established, and though it is true, as the gentleman from Albany [Mr. A. J. Parker] has stated, that the action of the court is not final, for it requires a confirmatory act of Congress, yet it is equally true that it has almost universally been regarded as final by Congress, and that Congress upon the adjudication being made, passed the necessary act for the payment of the claim. Mr. Chairman, in my judgment, courts of justice organized upon the principles of the common law are unsuited to the investigation of cases of this nature, and as a mode of investigation, they are not sufficiently practical in their working, or as capable of disposing of such questions intelligibly as a body would be specially devoted to this business. If, as contemplated by this amendment, you permit the State to be sued in every court in this State, how is the State to be protected? Is it to have a traveling solicitor wandering about from one judicial district to the other to investigate and defend such claims as may be made against the State, to watch effectually over its interests? Is it not better, if the State is to be prosecuted at all, that the prosecution should take place at the State Capital, where the means of information in respect to State affairs exist, where the officers to whom and by whom reports are made in matters relating to the interests of the State are located, where the archives of the State are located and where, if information in respect to the subject under investigation is needed, the proper authority may be applied to for it. The ordinary courts of justice could not and would not give the same attention to such cases as a special tribunal would do. Now, what are the objections made to this section? The first is, that in certain cases where damages of a larger amount than five hundred dollars, affecting real estate, are to be passed upon, the court shall view the premises injured. Now, sir, I beg leave to say, as the result of considerable judicial experience, that one of the wisest provisions in the common law, in my judgment, is that provision which permits a court in certain cases to allow a jury to view the premises, and I may add that it is wholly impossible in certain cases, to pass intelligently upon the questions to be submitted, unless that investigation takes place. And when the subject is that of damage to real estate, in my judgment, an inspection of the property itself, its location and relation to the property by which it is surrounded, the inspection of the actual damage done, the nature and extent of it, is of great importance in ascertaining the pecuniary value of the injury. Now, sir, this section is very carefully drawn; and the gentleman who drew it, whoever he be, had that

knowledge of the common law which led him to distinguish between these legal rules which affect the relation of individual to individual and the rules which relate to the relation which the individual holds to the State. When I read this section to-night, it occurred to me at first that perhaps a difficulty would occur in applying the ordinary rules of evidence, but I ascertained immediately, upon investigation, that the distinction referred to had been carefully preserved. Now, sir, what is proposed to be retained in the place of it? There are two modes of investigating claims—the one referred to by the gentleman on the other side of the chamber, that is, before the canal appraisers, and which embraces the largest part of the claims against the State, and the others which are investigated before a committee of the Legislature. With all deference to the Legislature I ask, is a committee of such a body as well adapted as a court composed of judges would be for the discharge of this duty. Judges whose experience would be enlarged by every case which they passed upon, and who, as a necessary acquisition for the discharge of these duties, would be familiar with such rules of law as are applicable to such investigations. A trained body of men of this kind is infinitely superior to any committee of the Legislature, however ably composed that Legislature may be, for the matter is merely incidental to members of the Legislature, or to any committee which may be called to pass upon it, while this tribunal is an organized and permanent body, and constantly acquiring knowledge and greater facilities in the investigation and dispatch of such business. The object to be attained is the protection of the State, and it is better protected in my judgment by submitting all such claims, as far as they can be submitted, to the judgment of such tribunal, and it is far safer to the State, a greater protection to it, to have a body of this judicial character to investigate and determine the justice of a claim, than to leave it to the determination of a committee of the Legislature.

Mr. T. W. DWIGHT—I would like to add a single word to what I said before, in response to the remarks of the gentleman from Kings [Mr. Murphy], that the effect of establishing a court of claims would be to do away with much of the business of special legislation. I have taken the pains to examine the index of the laws that have been passed from the formation of the Constitution of the State, of 1777, and found there had been five thousand special acts for relief passed up to the year 1858, and since that time four hundred and four, so that we have on our statute books five thousand four hundred and four acts of special legislation in regard to claims.

Mr. FERRY—I ask permission to amend the substitute by inserting the words "general laws" after the word "provide," in the first line, so that it will read, "the Legislature shall provide by general laws." I make it upon the suggestion of the gentleman from Onondaga [Mr. Andrews], believing it to be a manifest improvement upon the original substitute.

The question was put on the amendment of Mr. Ferry, and it was declared lost.

Mr. SCHOONMAKER—I offer an amendment.

The SECRETARY proceeded to read the amendment as follows:

Amend section — by striking out all down to and including the words "of appeals," in the fourth line on eighth page, and insert:

"SEC. —. There shall be a court of claims composed of three judges, to be appointed by the Governor, by and with the advice and consent of the Senate, who shall have exclusive jurisdiction to try and determine, without a jury, all such claims against the State as may be brought before them for adjudication, and the allowance and payment of which shall not be otherwise provided for by law. This court shall be governed in its determinations by the established principles of the courts of common law and equity, except so far as modified by the general statutes of this State, and the provisions of this Constitution. Whenever the claim shall be founded upon taking of, or injuries in regard to, land or water by the State, the said court shall view the property or premises in question, and in deciding thereon shall consider their own estimate of value or damages in connection with the evidence in the case. The court in rendering their decision, shall set forth therein their findings of fact and conclusions of law separately. The decisions of such court on the law may be reviewed upon appeal, by the court of appeals."

Mr. SCHOONMAKER—I offer this as a substitute. It contains substantially the provision of the original section, only in a little different language. It creates by the Constitution a court of claims instead of allowing it to be created by the Legislature. I think it is our duty to provide some plan by which claims against the State can be properly adjudicated. As other gentlemen have remarked, it is not proper that the State should permit itself to be sued in the ordinary courts of law, but at the same time that it is not proper, and she ought not to allow herself to be sued, she should make some other provision by which citizens may procure redress. We have now, as has been stated, the canal appraisers, and they have certain claims which they can adjudicate upon. All other claims it is necessary that there should be a special act of the Legislature for, and our experience of the past has been that it is desirable that all those claims should be withdrawn from the Legislature, and, therefore, it is that such a provision as this becomes necessary.

Mr. HARDENBURGH—I am entirely willing to adopt in this Constitution a provision, and indeed am extremely desirous that a provision organizing some tribunal for the adjudication of these claims, should be placed in our Constitution. I do not understand that my colleague's proposition differs in any material respect from the report of the committee, or the section reported by the committee. But I am somewhat anxious about one of the expressions he has used in it, and I would like for a moment to ask his opinion in regard to that. I think it leaves the door still open to the Legislature. It says that "courts shall have only jurisdiction of those claims which are not otherwise provided for by law."

Mr. SCHOONMAKER—The object of that is this: there are some claims that can be audited

and allowed by the Comptroller. There are other claims that can be audited and allowed by the auditor of the canal department, and there are other claims that may be allowed by other officers, and it is claims of that character that do not go to the court of claims.

Mr. HARDENBURGH—That I well understand, but does not the expression still leave this gap, cannot the Legislature, if it sees fit to do, provide for all claims?

Mr. SCHOONMAKER—I think not.

Mr. HARDENBURGH—That point I desire to call the attention of the committee to. Now, my idea ever since we have been reflecting upon this provision, is, as has been so ably stated by the gentleman from Oneida [Mr. T. W. Dwight], that the Legislature is not the proper tribunal to adjudicate these claims. And far beyond all that, and more than all that, I do not believe that these claims should be permitted to go into our courts. It is merely the same appraisers who will be appointed, just as we have always had. When we did not have other courts the Legislature did it themselves. So much has been said on this topic, and of the necessity of this court in some form or other, that it is idle to waste time on the subject. I rose only to see that the language was so guarded as not to admit of a doubt on the subject, and so that the Legislature could not, hereafter, under some mistake in the language, some loop-hole in it, do the same thing again. We have seen the difficulty of that, and I do not think any committee has made a report which has done so much good as this one, and we should give credit to the distinguished gentleman who drew this report. I think it will be as great a source of good as anything that we have yet attempted to place in the instrument that we are about to make.

Mr. ALVORD—I would ask whether an amendment is now in order?

The CHAIRMAN—It is not.

Mr. ALVORD—I would ask the gentleman from Ulster [Mr. Schoonmaker] to adopt the following as an amendment to his amendment:

"No determination in such court shall be final, but its finding shall only be advisory to the Legislature, which shall have no power to enlarge the amount of any such finding if they shall determine to authorize by law an appropriation for the payment of the amount so found to be due by the said court to the claimants."

Mr. SCHOONMAKER—I should prefer to have that come in as a separate proposition.

Mr. YOUNG—I think well of the plan reported by the committee. I have always felt the necessity of having some such court as that which they propose. I would prefer that these three judges be elected by the people the same as all other judges, but I prefer the language of the section as it is, to the amendment proposed by my colleague from Ulster [Mr. Schoonmaker]. The language in the original section, as I understand it, does not propose to alter the law as it now exists, between the claimant and the State. It says "in all respects such courts shall be governed in its adjudications by the legal rules which have heretofore existed between the State and its citizens according to the course and practice of the

common law as modified by the statutes of this State." I do not understand that the language in this section, as reported, proposes to alter the law as between the State and the citizen; but if I read the amendment aright, proposed by the gentleman from Ulster [Mr. Schoonmaker] it does alter the law as between the citizen and the State. It says, "said court shall be governed in its determinations by the established principles of common law and equity." Now, then, what are the established principles of common law and equity? Does this not mean to create new rights in favor of the citizen? Would not the citizen under this amendment have the right to redress against the State, the same as he would have against a corporation or any other individual of the State? For instance, in the case put by the gentleman from Oneida [Mr. T. W. Dwight] if a man should, in traveling across a canal bridge, receive an injury in consequence of the rottenness of the timbers of that bridge, or the carelessness of the State in keeping that bridge in repair, would not that man under this amendment be entitled to all the damages which he could prove, or make out against the State? I think this would be a serious question if this language was adopted. I prefer, Mr. Chairman, the language of the original section, because I think there is no doubt about the rights between the citizen and the State, being the same as heretofore established by law.

Mr. DALY—I hope the amendment of the gentleman from Ulster [Mr. Schoonmaker] will not prevail, for three reasons. First, it differs only from the original section submitted by the committee, by substituting a specification of the claims instead of allowing the Legislature to determine by general laws in what class of cases they shall have jurisdiction, which, in my judgment, is not improving it. Next, it requires that the investigation shall be in accordance with the established principles of the common law, except so far as they are modified by the statutes of the State or the Constitution. The principle of the common law in its broad application is not, in my judgment, suitable to a tribunal of this character. The inquiry relates almost exclusively to questions of fact, to questions of damage and of detail. And, third, the amendment requires that there shall be a finding of fact, that the court shall state its conclusions of fact and of law. Why should a specific provision of this nature be inserted in the Constitution? This is a matter for the consideration of the Legislature, and I doubt the propriety of it at all. I can see that in the majority of cases findings of fact would be very difficult, at least, such findings as are required under the Code. And, lastly, with reference to the appellate jurisdiction the amendment makes no material change. There is an appellate jurisdiction from the court of claims at Washington to the supreme court, and the provision submitted by the committee provides for such a review and is sufficiently explicit. In regard to the amendment proposed by the gentleman from Onondaga [Mr. Alvord] my objection is that it is unnecessary. The proposed constitutional provision makes the adjudication final, while the amendment of the gentleman from Onondaga [Mr. Alvord] is

that this court of claims shall be merely an advisory body and that the decision upon these claims shall go, as heretofore, to a committee of the Legislature, to be determined finally by them. That, in my judgment, would be no improvement. Why should there be two investigations? When one is made which may be reviewed upon appeal it is certainly sufficient. This is not, as the gentleman from Albany [Mr. Parker] supposes, in the nature of a judgment. It is not and cannot be enforced as such. It is only an adjudication of the question, an assessment of the claim, leaving the Legislature to make such provision for its payment as is usual in cases arising between the citizen and the State.

Mr. ALVORD—I would like to know how, by any possibility, money to pay any adjudication, or determination, or advice on the part of this court, can be got from the public treasury except by the passage of a bill appropriating money by the Legislature; and if that is so, must they blindly pass a certain appropriation bill, and must they be advised of the ground upon which they will pass to appropriate the money?

Mr. DALY—In the city of New York, judgments are obtained against the city corporation, and the board of supervisors have to provide the means for paying them, and it has been always in the habit of paying them. So in regard to the State, after a tribunal of this kind has passed upon the claim, after it has adjudicated that a claim is a just one against the State, and it is then for the Legislature to provide the means for paying it. The Legislature may or may not pay it, as they think proper. The claimant has not, nor has the court any means of compelling it. The Legislature can by law provide by law a specific fund for the payment of all such claims, or it may, as Congress does, pass upon each case by directing it to be paid, or it may refuse to pay it if it think proper.

Mr. CONGER—I will propose, with the approbation of the mover of this amendment, that it be modified so as to meet the objection which has been raised against it. I will read what I suggest, as follows:

Sec. 1. There shall be a court of claims composed of three judges to be appointed by the Governor by and with the advice and consent of the Senate, who shall have exclusive jurisdiction to try and determine, without a jury, all claims against the State, for the payment of moneys not included in the regular appropriation bills annually made by the Legislature.

Mr. SCHOONMAKER—I accept the amendment.

Mr. RUMSEY—We have examined the amendment, which is proposed in lieu of the section reported by the committee, and there is some difficulty with regard to the class of claims to be submitted to the Legislature, and the manner of getting them before the court, that I do not distinctly understand. I do not think myself, and I believe in this, I agree with those members of the committee with whom I have been able to consult, that it will tend to further the purpose of the provisions that we have made. There is one feature in that amendment in regard to the jurisdiction of the court which is not contained in

the original section. The gentleman from New York [Mr. Stratton] has an amendment to remedy that defect which will make the jurisdiction of the court exclusive. I think the section, as reported by the committee is preferable, when amended as proposed by Mr. Stratton.

The question was put on the amendment of Mr. Schoonmaker, and it was declared lost.

Mr. RUMSEY—I propose to amend by striking out the first line, and saying in lieu of it, that there shall be a court of claims.

The question was put on the amendment of Mr. Rumsey, and it was declared carried.

Mr. WALES—I offer the following amendment:

Strike out the words "to be appointed on the nomination of the Governor by and with the advice and consent of the Senate;" and insert, "to be elected by the electors of the State."

The question was put on the amendment of Mr. Wales, and it was declared lost.

Mr. STRATTON—I offer the following amendment:

After the word "individual" in line two, page 8, insert, "the jurisdiction of said court shall be exclusive;" and strike out the words, "in which court" in the third line, so that it will then read, "the jurisdiction of such court shall be exclusive and its decisions may be reviewed," etc.

Mr. RUMSEY—That amendment, I think, is eminently proper.

The question was put on the amendment of Mr. Stratton, and it was declared carried.

Mr. ALVORD moved to amend by inserting in the second line of the first section, on page 8, "the statute of limitations shall prevail in favor of the State within three years after the causes of action shall arise."

Mr. A. J. PARKER—Let me suggest one word in regard to that amendment. I was about to propose an amendment that should qualify the expression as it has been reported by the committee. The committee propose that the State may avail itself of the statute of limitations in these transactions the same as an individual. Now, that would be unjust, except as to claims that shall originate after the court is formed, because, if a claim exists, there has been hitherto no opportunity of making the claim in court. I would propose, therefore, to add to what is reported by the committee "as to all claims originating after the establishment of the court of claims."

Mr. ALVORD—I would state that there is a statutory provision now that limits it to one year; and it is inevitably, in almost every case, limited by legislative action.

Mr. A. J. PARKER—Is the amendment proposed by the gentleman from Onondaga [Mr. Alvord] that all claims shall be made within three years after the passage of this act?

Mr. ALVORD—Within three years after the claim shall arise.

Mr. A. J. PARKER—Suppose the claim has arisen three years ago, you have no remedy. If you make it three years after the adoption of this Constitution, because there is no opportunity—

Mr. ALVORD—I would ask the gentleman whether that would not let in claims of twenty years back?

Mr. A. J. PARKER—Suppose the claim has been in existence twenty years. There has been no opportunity of suing the State; there is nothing lost by the State; there is no laches.

Mr. RUMSEY—Allow me to make a suggestion. I understand that the Committee on Finances and the Committee on Canals have proposed to establish a statute of limitations with regard to these claims. When that report comes up for consideration we can understand what it is; and if it is adopted we can make this section correspond with that very readily.

Mr. A. J. PARKER—I do not object to the statute of limitations, but I would not cut off a party who has had no opportunity to present his claim hitherto; and this will cut off everything.

Mr. RATHBUN—Will the gentleman from Albany [Mr. A. J. Parker] allow me to say a word? I address myself to him. Can you, by a general provision, produce the effect which the gentleman has referred to? Is it possible, by a Constitution or by law, to establish a statute of limitations which, in effect, cuts off and destroys claims existing before you pass the Constitution or the law, and have it take effect?

Mr. A. J. PARKER—I would not leave that question open.

Mr. RATHBUN—Does it not necessarily, at the time of its passage, fix the limitation?

Mr. A. J. PARKER—I do not know that that would be the construction. It would, at least, give rise to controversy, and if the gentleman is right there can be no objection to the amendment I propose to make, the language of which is, "As to all claims originating after the establishment of the court of claims;" because it is only on these claims that there is an opportunity of presentation. If that is the law now, there can be no objection to declaring it and saving controversy.

Mr. ALVORD—It strikes me that the amendment of the gentleman from Albany [Mr. A. J. Parker] will result in letting in all claims, no matter how long they may have been in existence previous to the passage of the Constitution, and only limits it to "those that hereafter may arise." I wish to give the gentleman a little history of past legislation in this State. I can go with him into the library here and show him a digest of claims, where claims have been brought into the Legislature of this State—not one or two, but very many—from year to year, for five, ten, and fifteen years, until finally, by the pertinacity of the claimants, they have been passed into laws by the Legislature. That ought to be ended at once and forever. The law now is that no claim against the State shall be allowed by the canal appraisers, unless it comes within the limitation in the statute of one year; and I hope and trust that this Convention will put an end to these things at some time or other. I had the honor to have a seat here in 1844, and a claim came up while I had the honor of being on the Committee on Claims; and that claim was rejected unanimously by the committee. The party who had that claim persisted in his endeavor before the Legislature, and finally, in the year 1863, got \$2,500. It was here from 1844 to 1863. Now, sir, I want to put an end to such things, if possible, in the history of this State in the future.

Mr. A. J. PARKER—Suppose the claim originated eight years ago, and the party has applied to the Legislature and has not been enabled to obtain what he asks, no matter for what reasons and because he was unwilling to pay money or otherwise. He has a good claim that originated eight years ago, and this court of claims is organized. Is he to be cut off—

Mr. ALVORD—Oh, no.

Mr. A. J. PARKER—Because it is more than six years since his claim originated he must have no opportunity of obtaining redress before—when he has petitioned the Legislature in vain? I would ask if it is the intention to cut off such claims?

Mr. BELL—I would ask the gentleman if he thinks such a thing is possible—whether a man can have a good claim for eight years, pressing it continually, and not receive proper compensation?

Mr. A. J. PARKER—I do not speak of a claim which has been presented eight years unsuccessfully. I believe it is quite possible for a man to have a good claim against this State which is more than eight years old, and which has been presented and rejected; and I ask if such a claimant is not to find redress in the court of claims. If not, of what use is it? If it is to apply only to new cases, of what use is it?

Mr. CHESEBRO—I would like to ask the gentleman from Onondaga [Mr. Alvord] if he means to cover claims nine years old? The law now provides for six years.

Mr. ALVORD—I would strike out that portion in regard to three years.

The question was put on the amendment of Mr. Alvord, and it was declared lost.

Mr. A. J. PARKER—I offer the following amendment:

After the word "individuals," insert "as to all claims originating after the establishment of the court of claims." I have no objection to reserving this question until this subject is acted upon in the report of the Finance Committee; but I think the object should be effected in some way.

Mr. SCHOONMAKER—It strikes me that the amendment of the gentleman from Albany [Mr. A. J. Parker] is not proper. These individuals have had an opportunity of presenting their claims before the appraisers. They have their one year.

Mr. A. J. PARKER—I suppose it is not a canal claim; or they have not been allowed.

Mr. SCHOONMAKER—Then they have had an opportunity of appearing before the Legislature.

Mr. A. J. PARKER—Suppose they have rejected it.

Mr. SCHOONMAKER—Then that is evidence that it was not a proper claim, and after having been once adjudicated upon by a tribunal, that question is settled and there is no reason why it should have another adjudication.

Mr. SPENCER—it appears to me, though I may be mistaken about it, that there may be a difficulty in making a practical application of this provision in case this should be adopted. I am not in favor of putting anything of the kind in the Constitution; and I do not think it is a

proper subject of legislation. But the difficulty is this, our statutes of limitation are limitation of the actions. No action in certain cases shall be brought within such a time after the cause of action shall have accrued. In these claims against the State there is no such thing as an action or a cause of action.

Mr. BALLARD—It seems to me that it would be better to defer this action, and for this reason. We all know that in the statute of limitation there are certain disabilities that exist in regard to which the statute of limitations does not apply. Suppose the claimant was imprisoned for some cause, or some other disability existed for a time, then there ought to be a provision whereby this statute of limitations would not run against them.

Mr. A. J. PARKER—I will withdraw my amendment for the present.

Mr. GREELEY—I propose to offer an amendment to come in at the close of the section. "No claim once adjudicated under the provision of this article shall be hereafter revived or reconsidered in any manner whatever."

The question was put on the amendment of Mr. Greeley, and it was declared lost.

Mr. SCHOONMAKER—I move to strike out the words, "the statute of limitations shall prevail in favor of the State the same as in favor of individuals."

That provision can do no good. The statute of limitations fixed by law in reference to claims against the State will then prevail, and to put that clause in, to place the statute of limitations in reference to individual claims against the State, extends the statute to 6 years—in some cases to 20 years.

The question was put on the amendment of Mr. Schoonmaker, and it was declared lost.

The question then recurred, and was put on the amendment of Mr. Beckwith, to strike out the word "such" in the fourth line of the section, and also to strike out all after the word "State" in the fifth line down to and including the word "direct" in the sixth line, and it was declared lost.

Mr. HAMMOND—I move that the committee do now rise, report progress, and ask leave to sit again.

SEVERAL DELEGATES—No, no.

The question was put on the motion of Mr. Hammond, and it was declared lost.

Mr. CHESEBRO—I offer the following as a substitute for the section now under consideration:

"The Attorney-General shall take charge of the interests of the State in all matters depending before the court of claims."

I suppose, sir, that this matter has received the consideration of the committee, from the fact that they have been very particular in the consideration that they have given to the whole article; but I cannot understand myself, and shall have to inquire of the committee why it is that it is necessary to establish another law officer for the people of the State. We have already an Attorney-General, with assistants who are competent to discharge all the duties that will devolve upon that officer before this court of claims. At all

events, I think it is eminently proper and wise for the interests of the State, that whatever responsibility is devolved upon a law officer, should be devolved upon the Attorney-General. So far as this court is concerned, there should not be another law officer who is to receive a salary for his services. There are many other considerations why I think this substitute should be made; but I should be happy to know what particular reason there is for the creation of another law officer in addition to the Attorney-General.

Mr. RATHBUN—I propose to answer the gentleman's question. I understand, from one member of the board of canal appraisers, that they have now registered documents and claims for damages along the line of the canals in over eight hundred cases. That is from one quarter, and I think that is an answer sufficient to show the gentleman that the Attorney-General cannot do it and pay any attention to his other business. It will require every hour of the best man in the State to do that labor as it ought to be done, in my judgment.

Mr. CHESEBRO—Does not the gentleman know that the Attorney-General has an assistant, who receives a salary from the State, who will be competent to discharge this duty?

Mr. RATHBUN—That may be so; but I understand that his duties are mainly confined to the office; the Attorney-General is liable to be called away on business appertaining to his office at any hour. I desire to have a man whose sole business it shall be to be upon the spot and attend to this business and no other. It is not the practice of the law any more than it is hunting up testimony. He is to be the sole man to look after the interests of the State everywhere, to go everywhere and see everybody, to prepare cases, to get them ready and to protect the State, and who will want every hour of his time to do it. We had better pay any amount of money to that officer than to impose that duty upon the Attorney-General of the State, by whom it cannot be done as it ought to be.

Mr. GERRY—The Attorney-General is the representative of the people of the State of New York. He has the charge of all the regular business in which they are a party. He has the power at the present time, by statute, to appoint a deputy. The Legislature may undoubtedly authorize him from time to time, when it is found necessary, to appoint as many deputies as may be necessary to transact the business of his office whenever that business legitimately increases. If an officer is appointed, of a quasi-legal character, having no one to whom he is responsible for the discharge of his duties, there can unquestionably be no co-operation between him and the Attorney-General. He is not in any sense subject to the wishes or the direction of the highest law officer of the people; and then we stand in a position of having a local officer to carry out a specific legal duty, which properly comes within the purview of the Attorney-General of the State; besides which we have an incidental heavy expense which certainly would not be equalled by any deputies who are to be subordinate to and under the direction of the Attorney-General, over whose

movements he unquestionably exercises a supervision. I am in favor of having this left to the legitimate officer of the people.

Mr. MORRIS—I move that the committee do now rise for the purpose of enabling the Convention to take a recess until half-past eleven o'clock. If we are going to sit for several hours it seems to me eminently proper that we should have an opportunity to fortify the inner man for continued labor.

The question was put on the motion of Mr. Morris, and it was declared lost.

Mr. CONGER—I would like to say one word. If there are now eight hundred cases before the canal appraisers for adjudication, that may seem to be a very good reason why a special officer should be designated; but unless the committee suppose that there will occur every year some four hundred or eight hundred cases, it seems to me unnecessary to provide for an officer of this kind in the Constitution. I would suggest that if it was necessary to have such an officer, the Legislature might by law establish the office.

Mr. E. P. BROOKS—Inasmuch as allusion has been made to the number of cases before the canal appraisers, perhaps the committee will pardon me for saying that, according to the report of the Canal Committee, there appears to be about eight hundred cases undisposed of in the canal appraisers' office.

Mr. YOUNG—Will the gentleman allow me to ask him a question? How many cases of this character arise every year?

Mr. E. P. BROOKS—I was about to state that. I have held the position of canal appraiser for two years, and during that time I think the board of canal appraisers have tried, on an average, about three hundred cases. I think the calendar remains about the same as it did when I was connected with the board. That is, there are about three hundred cases sent to that board by the Legislature and the canal commissioners every year. The canal appraisers have general jurisdiction to hear cases only that involve the title to real estate, and where the State has appropriated waters to the use of the State; and that other class of cases which the canal commissioners shall refer to them for adjudication, and where the canal commissioners shall temporarily appropriate the land or water of a claimant for canal purposes. That kind of cases, perhaps, are the majority of the cases presented to them. It is provided by law that the canal commissioner, if he sees proper, may appoint a counsel upon a trial before the canal appraisers. He does not do it in one-half of the cases, and what is the result? When the canal appraisers go to try cases in a distant part of the State, perhaps where they are strangers and do not know the witnesses, they have very little opportunity to examine the case or to examine as to who should be proper witnesses to be called. They are obliged to act as judges, as counsel and as jurors. The cases that I think would properly come before the canal appraisers would be on the average about 200 or 250; but the committee can judge as well as I whether the Attorney-General ought to attend to those cases or not.

The question was then put on the amendment

of Mr. Chesebro, and it was declared lost—the vote being 28 to 41.

SEVERAL DELEGATES—There is no quorum.

Mr. SPENCER—I move that the committee now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Spencer and it was declared carried, on a division, by a vote of 49 to 26.

Whereupon the committee rose and the PRESIDENT resumed the chair in Convention.

Mr. BARKER, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Legislature, its Powers and Duties, and after having made some progress therein, had, on a division, found there was no quorum present and had directed their chairman to report that fact to the Convention and ask leave to sit again.

The SECRETARY then proceeded to call the roll, when the following gentlemen answered to their names:

Messrs. A. F. Allen, C. L. Allen, Alvord, Andrews, Axtell, Ballard, Barker, Barto, Beals, Beckwith, Bell, Bickford, Bowen, E. P. Brooks, E. A. Brown, Case, Champlain, Chesebro, Conger, Cooke, Corbett, Curtis, Daly, C. C. Dwight, T. W. Dwight, Eddy, Ely, Farnum, Ferry, Field, Fowler, Garvin, Gerry, Gould, Grant, Graves, Greeley, Hammond, Harris, Hitchcock, Hitchman, Houston, Hutchins, Kernan, Landon, Larremore, A. Lawrence, Lee, Livingston, Magee, Mattice, McDonald, Merwin, Morris, Opdyke, A. J. Parker, President, Prindle, Rathbun, Reynolds, Robertson, Root, Rumsey, Schell, Schoonmaker, Seaver, Silvester, Spencer, Stratton, Tappen, S. Townsend, Van Campen, Van Cott, Verplanck, Wakeman, Wales, Williams, Young—78.

On motion of Mr. MORRIS the Convention adjourned.

SATURDAY, August 31, 1867.

The Convention met at ten o'clock A. M.

Prayer was offered by Rev. STEPHEN L. STILLMAN.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. GREELEY presented the petition of sundry citizen against the donation of money or property for sectarian purposes.

Which was referred to the Committee of the Whole having the subject in charge.

Mr. GREELEY also presented the petition of John P. Hildreth, for the prevention of the sale of intoxicating liquors as a beverage.

Which was referred to the Committee on Adulterated Liquors.

Mr. WAKEMAN presented a memorial on the same subject.

Which took a like reference.

Mr. HALE—At the request of several members of the Judiciary Committee, in the absence of the chairman, I ask the unanimous consent of the Convention to add a provision which was omitted in the engrossing of the report.

The PRESIDENT—No objection being made, such consent is given.

Mr. HALE—It is that one-half the justices of the supreme court shall reside in each district at the time of their election.

Mr. SEAVER, from the Committee on Printing, submitted the following report:

Your committee, to whom was referred the following resolutions, to wit:

1. *Resolved*, That twice the usual number of the report of the Committee on the Judiciary be printed for the use of the Convention.

2. *Resolved*, That there be printed two thousand extra copies of the report of the Committee on Charities and the accompanying papers.

3. *Resolved*, That there be printed for the use of the members two thousand extra copies of the report of the canal investigation committee of the Legislature—

Would, in view of the short time which this Convention will continue in session, the great expense to be incurred by the adoption of the foregoing resolutions, with no corresponding benefit likely to result to the Convention or the people, respectfully recommend that the said resolutions be not adopted.

J. J. SEAVER, *Chairman*.

The question was put on agreeing with the committee, and it was declared carried.

Mr. TAPPEN—I ask leave of absence for myself for to-day, from and after the hour of twelve o'clock.

The question was put on granting Mr. Tappen leave of absence, and it was declared carried.

Mr. EDDY—I ask leave of absence for Mr. Prindle from to-day's sitting and for next week, as he is necessarily detained.

The question was put on granting Mr. Prindle leave of absence, and it was declared carried.

Mr. EDDY—I ask leave of absence for Judge Ferry for Tuesday's sitting.

The question was put on granting Mr. Ferry leave of absence and it was declared carried.

Mr. MORE—I ask leave of absence from the sitting of to-day till Wednesday next.

There being no objection, leave was granted.

Mr. E. A. BROWN, from the standing Committee on Future Amendments and Revisions of the Constitution, submitted the following report:

The Standing Committee on Future Amendments and Revisions of the Constitution respectfully

REPORT:

That they have had under consideration the subject referred to them, and have carefully considered the same, and herewith submit to the Convention an article on the subject so referred.

The first Constitution of this State, adopted in 1777, contained no provision for its amendment or revision.

The Constitution of 1821 contained a provision for its amendment, but none for a general revision. The Constitution of 1846 contained a provision for its amendment from time to time, and also for revision, giving the Legislature power to submit to the people the question of holding a Convention for that purpose at any time, and making it imperative that the question should be so submitted at the expiration of twenty years and in each twentieth year thereafter.

The question whether a Convention should be held to form a Constitution for this State was not submitted to the people in 1777. But the committees, freeholders and other electors of the different counties, on a recommendation of the Colonial Congress, elected delegates to a Convention to provide a form of government for the State, which framed and put into operation the Constitution of 1777, and though not submitted to a formal vote for ratification by the people, it was, by general acquiescence of the authorities and the people themselves, accepted and remained for about forty-four years the Constitution of the State, with but a single amendment, which was made in 1801. In that year the Legislature passed an act providing for holding a Convention exclusively for the purpose of amending the Constitution, respecting the number of Senators and members of Assembly and for the purpose of considering and determining the true construction of the Constitution as to nominations to office. Those objects were accomplished, and no other successful effort was made to amend the Constitution of 1777 in any respect until it was supplanted by that of 1821.

In 1820 an act was passed by the two houses of the Legislature providing for the election of delegates to a Convention for the purpose of making such alterations in the Constitution of the State as they might deem proper.

This act encountered the opposition of the Council of Revision (including the Chancellor and the Governor), mainly for the reason that the sense of the people had not first been taken as to whether such revision or alteration of the Constitution was, in their judgment, necessary or expedient. The act, therefore, failed to become a law.

At the next session of the Legislature, in 1821, a law was passed submitting to the people the question whether such a Convention should be held. The question having been submitted and decided in favor of the Convention, it was held, and framed the Constitution of 1821, which was submitted to a vote of the people and ratified by a large majority at a special election held for the purpose.

Notwithstanding all these formalities, it has been gravely insisted that the Convention of 1821 was an unauthorized and an unconstitutional body, and that the work of its hands derived its authority solely from the subsequent action of the people, in adopting and ratifying its proceedings, and by general acquiescence therein; the right of revolution successfully carried into effect.

It is not the purpose of the committee to enter upon any discussion of such question in this report, but desire to prevent their recurrence in future. The Constitution of 1821, differing in this respect from that of 1777, as above stated, contained a provision for its amendment, but none for its future revision, and for that reason it has been said that the Convention of 1846 was also unauthorized, and that the result of its labors had no better and no other foundation to rest upon than the right of revolution, and that the Constitution of 1846 became obligatory solely by occasion of

the subsequent ratification and adoption thereof, and by the general acquiescence therein by the people of the State.

While such questions are, undoubtedly, more theoretical than practical or useful, your committee are well satisfied that the provisions in the Constitution of 1846, both for amendment and revision, are wise and salutary, and ought to be substantially retained.

In the article herewith submitted by the committee, the provisions of the existing Constitution are substantially preserved. We therein provide for amendments by the concurrent action of two consecutive Legislatures, and a final submission of all proposed amendments to a vote of the people for ratification.

There exists some differences of opinion in the committee, in relation to that part of the article submitted, providing for future revisions by Conventions; one gentleman is opposed to fixing any specific time when the electors shall be called upon to decide upon the question of holding a Convention; and another is opposed to allowing a Convention to be held, without the affirmative vote of a majority of all the electors who vote for public officers at the general election, when the question of a Convention shall be submitted for decision.

The majority of the committee are, however, clearly of the opinion that it will not be detrimental to the people of the State to agitate the question of remodeling their organic law, at least once in twenty years, and as much oftener as public sentiment, acting upon and through the Legislature, may call for such agitation; and we have no apprehension that a Convention will, at any time, be called when in reality there is no occasion for holding one; that the intelligent electors of the State will not fail to properly settle that question whenever presented.

As to requiring a majority of all who vote for officers at the general election at which the question of calling a Convention shall be submitted for decision, instead of a majority of those only who may vote on the question itself, it is believed that such a requirement would in many, and might in all cases defeat the calling of a Convention altogether. Many causes might operate to diminish the vote on that question, irrespective of the merits of the question or the wishes of the people, and it will be found by reference to similar elections, that a much smaller vote has been cast upon such questions than for candidates for the public offices voted for at the same election. Two recent instances are in point. In 1858 the Legislature provided for taking a vote of the people upon the question of holding a Convention to revise and amend the Constitution. The vote for the Convention was 135,166, and against it 141,526, making a total of 276,692; while at the same election the aggregate vote for Governor was 544,816, nearly twice the number given on the question of Convention. At the election of 1866, by which this Convention was called into being, the whole number of votes for a Convention was 352,854, against it 256,364, total 609,218, while the aggregate vote for Governor at the same election was 719,195, about 110,000 more than the votes given on the

question of a Convention. Of those voting on the question of holding a Convention, a majority of 96,490 was given in favor of the proposition. This we regard as a fair and sufficiently full expression of the public sentiment of the people of the State on that question, and we cannot believe that any evil is likely to result from the provision in question, making a majority of those only who vote upon the question sufficient to call a Convention.

All agree that the constitutional provisions on the subject in question should be clear and unambiguous, and for this purpose we have omitted a few surplus words and made such changes as is above indicated in the language of the Constitution of 1846, as to remove all doubt and uncertainty, and provide distinctly that a majority of all who vote upon the question of Convention or no Convention to revise the Constitution, or to ratify a proposed amendment thereto, shall be sufficient without requiring a majority of all who vote at such election for candidates for office.

Your committee therefore being satisfied with the working of the Constitutions of 1821 and 1846, on the subject in question, respectfully recommend the adoption by the Convention of the article herewith submitted for its consideration.

All which is respectfully submitted.

Albany, August 29, 1867.

EDWARD A. BROWN,
Chairman.

HORACE GREELEY
JOHN GRANT,
W. A. REYNOLDS

ARTICLE —.

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their respective journals, with the yeas and nays taken thereon, and be referred to the Legislature to be chosen at the next general election when Senators shall be chosen, and shall be published for three months next previous to the time of making such choice; and if in the Legislature so next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become part of the Constitution.

SEC. 2. At the general election to be held in the year one thousand eight hundred and eighty-six, and in each twentieth year thereafter, and also at such other time as the Legislature may by law prescribe, the question, "Shall there be a Convention to revise the Constitution and amend the same?" shall be decided by the electors; and in case a majority of the electors voting on the question at such election shall decide in favor of a Convention, the Legislature, at its next session,

shall provide by law for the election of delegates to such Convention.

Which was referred to the Committee of the Whole and ordered to be printed, under the rule.

Mr. MURPHY—As a member of the committee, I am compelled to dissent from the conclusion to which that committee has arrived and with the report just read by the gentleman from Lewis [Mr. E. A. Brown]. I am in favor of the constitutional provisions on the subject of future amendments as they provided. It will be recollected that by the present Constitution two different modes of amendment are pointed out. One is by the Legislature voting at two successive sessions for proposed amendments, and then submitting them distinctly to the people. The other is taking the sense of the people, at intervals of twenty years, whether a Convention shall be called for the purpose of revising and amending the instrument. Those two provisions united are new. There is no Constitution that I am aware of in any State, adopted previous to the Convention of 1846, which provided both these modes of proceeding. In taking the sense of the people on these different occasions, different courses are pursued. When amendments are proposed by the Legislature and submitted, the Constitution provides that the majority of the electors voting upon the proposition shall be sufficient to carry the amendment; but when the sense of the people is taken for the calling of a Convention of general revision, a majority of all the voters voting at the election is necessary. Now, although it does not appear in the public proceedings of the Convention of 1846, or in the debates at that time, yet, according to my recollection, this distinction was stated, and in some measure debated. The reasons assigned for the distinction then were, in my judgment, valid, and they are so now. There is no doubt that when a Constitution does not subserve the purposes for which it is intended and there are evils which require remedy such evils should be promptly corrected. The first clause to which I have referred points out a sufficiently speedy way for that purpose. But, on the other hand, it is not desirable that the fundamental law should be changed or altered often, or without the greatest necessity. Stability in our Constitution and laws is of the greatest consequence for the interests of the community. No Convention should be called for the purpose of revising the Constitution, that is, for the purpose of making corrections generally, unless upon the most deliberate and full decision of the people on the question. When, therefore, it is provided, as it is by the present Constitution, that any particular evil may be remedied by itself at any time, it is entirely wise and proper, in my judgment, that you should have the sense of the whole elective body affirmatively in favor of a Convention for general amendments. Now, sir, by the plan as proposed by the committee a small minority of the people may call a Convention. It merely requires a majority of those voting upon the question, and if only one hundred of the electors vote, fifty-one may carry the measure. It is very evident that if the minority of the people only

vote upon that question there cannot be such serious evils to be remedied as to require a Convention. For these reasons I have been compelled to dissent from the report of the majority of the committee and to recommend the retention of the present provisions of the Constitution on the subject construed as I have explained.

Mr. GREELEY—What the committee desired, I think, with unanimity, was that this article should be precise and unmistakable in its provisions. We have had long debates out of the Legislature on this question, whether the Constitution as it stands, authorizes a majority of those voting upon the question, or requires a majority of the whole number voting on any question, to call a Convention. We determined to make this so clear that there could be no cavil upon the point hereafter; and so far, I believe, there was a unanimous agreement of the committee that we should do so. Having so decided, the majority determined that, according to the general principles of republican government, those who neglect their duty—in my judgment, their moral obligation—of voting on a great public issue, should be concluded by the votes of those who do *not* neglect their duty. That is a general principle of republican government. Many choose to stay away from the polls and not vote. The principle of our institution says: "Let every man vote; but if he does not vote, he must not find fault with the action of those who do vote." If there are but one hundred votes in all for Governor, and fifty-one of these votes are cast for one man, he is chosen Governor. According to the idea of republican institutions, the half million who stay at home and do not vote are as much bound by that decision as though they had performed their duty; and I think it should be the rule of all deliberative bodies, as it is the rule binding on the people. We have made this so plain in our report that there can be no more cavil as to who shall call a Convention, or whether one is or is not called; and then, if the people do not want a Convention, or any part of them do not want it, when the question is before them, they must come forward and vote. They must not stay at home and say, "We do not choose to vote," or "We will not vote on this question, and we shall be considered as voting in the negative." Your committee decided that this was not a proper way to take the sense of the people; and when the question is, after all, "Shall the people have a chance to revise and pass upon amendments to the Constitution?" such amendments not to be valid without their sanction, it seemed better to make it plain in the way in which the present Constitution was decided to mean by the Legislature calling this Convention, and by the Convention itself.

Mr. C. L. ALLEN—I rise to a point of order: that this report is not now before this Convention.

The CHAIRMAN—It is not, but explanations are in order in connection with the presentation of the report.

Mr. MURPHY—The remarks I submitted were simply by way of a minority report. I had no time to write them out. I do not intend to say anything in reply to the honorable gentleman from

Westchester [Mr. Greeley], but I wish to say this: that when the report of the committee shall come up for consideration, if it be considered that there is some ambiguity existing in the present provisions of the Constitutions, as there probably is, I shall seek by a suitable amendment to make it so plain that he who runs may read and understand.

Mr. COOKE—I offer the following resolution, and request that it be laid on the table and be printed.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That the Committee of the Whole, having in charge the report of the Committee on the Judiciary, be instructed to report to the Convention the following article:

ARTICLE —.

JUDICIAL DEPARTMENT.

SECTION 1. The judicial power shall be vested in a court of appeals and a supreme court; county courts and surrogates' courts in counties; justices' courts in towns; and such other courts of limited jurisdiction in cities, as the Legislature may provide.

§ 2. The court of appeals shall consist of nine judges, one of whom shall be designated in a manner to be prescribed by law, the presiding judge. Five judges, of whom the presiding judge shall always be one, shall constitute a quorum for holding a term. The concurrence of at least four judges shall be necessary to reverse any judgment on appeal. The terms of the court of appeals shall be held at the capitol at such times as the Legislature may prescribe. The presiding judge shall designate the judges to hold any term, and shall have power to assemble at any time all the judges for consultation and review of any case or cases pending in the court and to suspend judgment in any case argued or submitted in said court, for the purpose of obtaining such consultation and review. The court of appeals shall have final appellate jurisdiction in such cases as shall be provided by law.

§ 3. The supreme court shall consist of not less than nine justices, one of whom shall be designated chief justice, in such manner as the Legislature may prescribe. General terms of the supreme court shall be held by not less than three justices, to be designated by the chief justice. The supreme court shall have original, general jurisdiction, and the same appellate jurisdiction as has heretofore been vested in the supreme court of this State; *Provided, however*, That no appeal shall be entertained by said court in any case originating in a justice's court.

§ 4. The State shall be divided into a convenient number of circuits, not less than eight nor more than twelve, in each of which there shall be a circuit judge, who shall possess the powers of a justice of the supreme court in the trial of issues of fact and law, the hearing and decision of motions, and in criminal cases and at chambers; *Provided*, That no county shall be divided in the formation of circuits. Provision may be made by law for one or more additional circuit judges in the city and county of New York.

§ 5. There shall be in each county a county judge, who shall hold the county courts therein. The county court shall have final appellate jurisdiction in all cases arising in justices' courts, and original jurisdiction of all actions of libel, slander, assault and battery, and malicious prosecution, and such other civil and criminal jurisdiction as the Legislature may prescribe.

§ 6. There shall be in each county a surrogate's court of such powers and jurisdiction as have heretofore been vested in such courts.

§ 7. Justices' courts of inferior jurisdiction shall be established by law. Such courts shall have civil jurisdiction in actions for the recovery of money only, or for the recovery of specific personal property where the damages, or the value of the property claimed shall not exceed fifty dollars. The justices chosen to hold such courts shall have such criminal jurisdiction as has heretofore been possessed by justices of the peace.

§ 8. Courts of oyer and terminer shall be held by the circuit judges.

§ 9. Judges of the court of appeals and justices of the supreme court shall be elected by the electors of the State at large, and shall hold their offices for the term of nine years; *Provided*, that those elected at the first election under this Constitution shall be classified in such manner as the Legislature shall direct, so that one of the judges and one of the justices so elected shall go out of office at the end of one year, another at the end of two years, and so on successively to the ninth year.

§ 10. Circuit judges shall be appointed by the Governor, by and with the advice and consent of the court of appeals, and shall hold their offices during good behavior.

§ 11. County judges and surrogates shall be elected by counties, and shall hold their office for four years.

§ 12. Vacancies in any of the elective offices provided for in this article, shall be temporarily filled by appointment by the Governor.

§ 13. The compensation of county judges and surrogates shall be fixed from time to time by the boards of supervisors of their respective counties. That of the other officers named in this article shall be provided by law.

The PRESIDENT—This resolution, at the request of the mover, will lie on the table, and there being no objection it will be printed.

Mr. BOWEN—I wish to ask leave of absence for myself until Wednesday morning next.

The question was put on granting Mr. Bowen leave, and it was declared carried.

Mr. BELL—I wish to ask leave of absence for myself for that portion of this day's session which may transpire after twelve o'clock.

The question was put on granting Mr. Bell leave of absence, and it was declared carried.

Mr. HITCHMAN—I ask the same leave of absence.

The question was put on granting Mr. Hitchman leave of absence, and it was declared carried.

Mr. KETCHAM—I ask the same leave of absence.

The question was put on granting Mr. Ketcham leave of absence, and it was declared carried.

Mr. ALVORD—I move that this house do adjourn this day at twelve o'clock.

The question was put on the motion of Mr. Alvord, and it was declared carried.

The Convention then resolved itself into Committee of the Whole on the report of the Committee on the Legislature, its Powers and Duties, Mr. BARKER, of Chautauqua, in the chair.

The CHAIRMAN announced the pending question to be on the amendment of Mr. Chesebro, "The Attorney-General shall take charge of all matters depending in the court of claims."

Mr. GERRY—I move, as a further amendment, to strike out the whole section. My reason for so doing, in the first place, is, that power is already conferred by statute upon the Attorney-General to prosecute all claims in favor of the State, to defend all claims made against the State, and to collect money due the State, and to pay it over to the State treasury immediately. This appointment of a separate solicitor in the first place is an interference with the duties which already devolve upon the Attorney-General by statute. The Attorney-General has shown himself so far competent to conduct that business, and the Legislature has already given him one deputy for the purpose of assisting him, and if he requires any further assistance, for carrying out the provision which we have inserted in the Constitution and which is a matter of legislative interference, the Legislature will give him an additional deputy or deputies adequate for that purpose. This section as it stands provides for the appointment of a new law officer without designating at all definitely his powers and duties, which powers and duties, unless in some way limited, must supersede and override those now possessed by the Attorney-General. The solicitor proposed by this section is responsible to nobody; he stands simply as an appointee of the Governor, and every argument which has been urged heretofore, or which can be urged against the appointment of either district attorneys or of the Attorney-General, applies with equal force to the appointment of a solicitor. There is no one to overlook this solicitor and see whether or not he properly discharges his duties to the State. He may be made a victim of corruption by any powerful combination that may see fit or may be able to corrupt him, and omit to defend the State in cases where suits are brought against it. So we have this practical result: here is an irresponsible law officer acting, at the same time, as a *quasi* Attorney-General, representing the people of the State in a certain class of claims, subject to be corrupted at any time without being responsible for his conduct to any officer or any body of constituents. On the other hand, the deputy Attorney-General is responsible to the Attorney-General directly. The Attorney-General is the highest law officer of the people. He is a representative of the people; he is responsible to the people for his conduct, and there is no corruption, no error in defrauding the State, and no omission or lack of duty of himself or deputies, for which he is not responsible. The Attorney-General himself is a party who is held responsible for the acts of his deputy. But here is a

solicitor without the power to appoint a deputy, without being responsible to any person under heaven. He may be appointed by the Governor, and may be influenced by any one who may have an interest in having claims against the State, feebly defended or not defended at all. I propose, therefore, to strike out the section entire. The result of so doing will be that the matter embraced in its terms falls within the purview of the office of the Attorney-General, who has already exercised that power under the present Constitution for twenty years without complaint.

Mr. RUMSEY—I think we had better reflect a little before we vote to strike out that section entirely. I understand that the Attorney-General has now upon his hands as much business as he has time to bestow upon it, and I am entirely unwilling to leave in the hands of a subordinate the large amount of claims that must necessarily come before this court which we are about to establish. It is perfectly evident from the remarks of the gentleman who now occupies a position upon the board of canal appraisers [Mr. E. P. Brooks], that the amount of claims which for some time will be before this court will be enormously large, and it is important to have a man upon whose responsibility we can rely, upon whose fidelity we can trust. It is for this reason that the provision was made in this section for the appointment of a man of approved honesty and abundant capacity to do this business, and for whom the Governor and the Senate, by whom he is to be selected and appointed, shall be directly responsible. I am as averse as any person can be to incorporate in the Constitution an office which shall continue during the continuance of the Constitution, and I would not object to any provision which would limit the term of this office to some definite term of years, or which would give the Legislature the power to abolish it whenever they shall find it is unnecessary. This mode of disposing of claims against the State is new and untried. It involves an inquiry into the correctness of a large amount of claims against the State, and requires on the part of the solicitor of claims a knowledge of the claims heretofore made against the State, and of the title of the State to the lands along its canals. For these reasons this officer should be one who will bestow his time to the examination of those claims and of those only. If he does it faithfully it will occupy all his time.

Mr. E. P. BROOKS—In so far as the interests of the State are involved, we all would have confidence in placing them in the hands of the Attorney-General. If that official had the time to devote to the class of cases to be tried before this court, I certainly, for one, would be in favor of sending them to him. But, as the gentleman from Steuben [Mr. Rumsey] has just remarked, I believe that official has all the labor he can well perform. I am of the opinion that some restriction should be placed in this section. I believe that this court, which we are about to establish, will be able to close the unfinished business within the next two years at farthest. And after they shall have done so, then I believe the Attorney-General will be able to take care of the current business. But here is this accumulation of old business in the office of the canal appraisers, I do not believe the Attor-

ney-General will have the time or the physical ability to dispose of it in addition to his other onerous duties. When that is once disposed of and only the current business is to be provided for, I am satisfied the Attorney-General will be able to discharge the additional duty. I propose when the proper time arrives to offer this amendment as additional to this section, "Such solicitor may be removed by the Governor for incompetency or neglect of duty upon the unanimous recommendation of said court." That meets the objection urged by the gentleman from New York [Mr. Gerry]. "Whenever, in the judgment of the Legislature, the office of solicitor shall become unnecessary they shall abolish the same by law." If this court should be able to dispose of the unfinished business within the next year, as I believe they would, then in my judgment it would be unnecessary to continue the office of solicitor and the Legislature could abolish it.

Mr. CHESEBRO—I suppose the question will first be taken upon the amendment proposed by myself. I should have no objection to the amendment of my friend from New York [Mr. Gerry], because it will reach substantially the same result as the one I have proposed. Still I prefer the question should be taken upon this amendment. I therefore shall not accept it as my own. When I made this proposition last night I did not suppose there could be any objection on the part of this committee to its adoption. Indeed, I was surprised when I saw the clause in the report of the committee. Three or four days ago we had a long discussion on this subject, as to whether or not the Attorney-General of the State should be elected or appointed. And gentlemen were long and loud in their appeals to the committee to leave in the hands of the people the power of electing their law officer. What is proposed to be done now? To create a law officer who, according to the report of the gentleman who is a member of the board before which these claims are now pending, would have more duties and larger responsibility than the Attorney-General of the State himself. There are pending before that board claims that will be transferred to this court of claims to the number of some hundreds of cases, every one of which is a lawsuit. It is proposed now to create an officer by appointment of the Governor, contrary to the theory which was adopted by the committee the other day, and by the Convention, who is to have larger power and more responsibility than that possessed by the Attorney-General himself. I would like to know where is the consistency in this Convention? Shall we go on and frame an instrument which in one clause says the people are to elect their own Attorney-General, and in the very next article provide that the Governor shall appoint an officer of equal power and the same responsibility to discharge the same duties. Let us have some consistency in this instrument, and not in one clause provide that an officer shall be elected because that power properly belongs to the people, and in another provide that he shall be appointed. I do not understand from the committee who have addressed us on this question why the duties of this office cannot be discharged by the Attorney-General or his deputies, because if the Attorney-

General is not able to devote his time to the protection of the rights of the State, it is known to us the State has authorized him to employ deputies, and he can have as many deputies as he requires. Then we have a responsibility. As has been so well stated by my friend from New York [Mr. Gerry] this officer is to be appointed by the Governor, and is responsible to him alone; but he is liable to those very corruptions to which allusion has been made. If the Attorney-General of the State is to perform this duty, he is responsible to the State; we know where to look. If there is anything in the manner of discharging his duty which calls for the animadversion of the people, we know where to fix the responsibility. It is upon the law officer of the State. Then I would like to know what is to be done in regard to the conflict of jurisdiction between these two officers. The Attorney-General has the right—he is now charged by law with the responsibility of defending the State against those claims, and yet we create an officer under this clause who is to have the same power and the same responsibility. There is to be no responsibility anywhere. I trust that either the amendment suggested by myself, or the one suggested by the gentleman from New York [Mr. Gerry] will prevail. One further consideration. The gentleman who is now a member of the board of canal appraisers [Mr. E. P. Brooks] says that the business that is now pending before that board constitutes a great evil necessary to be corrected, and is necessary to be corrected by this section which establishes this court of claims, that the great part of that business will be concluded in the course of one or two years. If that is so, I would like to know why it is not far better to have a deputy of the Attorney-General to discharge the duty for one or two years, instead of creating this office, and leaving it to the Legislature to say whether or not it shall be continued; whether we shall have a supernumerary to hold office, under a salary of three, four or five thousand dollars, and continued in office at the pleasure of the Legislature. I do not believe in vesting them with any such discretion, and I hope, for the sake of consistency in the Constitution we are framing, that the amendment I have proposed will be adopted.

Mr. A. J. PARKER—I am opposed to this amendment of the gentleman from Ontario [Mr. Chesebro], and also to the proposition of the gentleman from New York [Mr. Gerry], to strike out this section. But my principal objections to the establishing of a court of claims are removed by the suggestion of the gentleman from Onondaga [Mr. Alvord], by which that court is not to render judgments which are conclusive. If we are to have a court of claims at all, we should have a solicitor, appointed specially to take charge of the interests of the State before that court. I do not believe it would be wise to devolve these duties upon the Attorney-General. It is very evident he has not the time to discharge them. They will require the constant attention of a very faithful and vigilant officer. I do not believe it is safe to devolve these important duties, in which the State is so largely interested, upon an officer who has not

the time to attend to them personally and to trust to their being discharged by his deputy, I think this is a duty that should not be performed by a deputy. The officer should be carefully selected, as doubtless he would be, by the Governor, with the advice and consent of the Senate; he should be one eminently qualified for the duty, one of known integrity, of business habits, who will devote himself unremittingly to the discharge of this duty—for it will be necessary to have all these qualities if you will protect the State against plunder. I am, therefore, in favor of appointing a solicitor of claims. It may be that it will not be necessary to continue this officer, possibly not to continue the court. I shall be in favor, therefore, when the proper time comes, of the amendment which has been suggested by the gentleman from Chemung [Mr. E. P. Brooks] to give the Governor the power of removal, on the recommendation of all these judges, and giving the Legislature power to abolish this office if it should turn out to be unnecessary. In this way I think the public interests will be protected. I do not believe they can be protected at all without such an officer.

Mr. ALVORD—I wish to say in connection with a remark made by the gentleman from Albany [Mr. A. J. Parker], in answer to the gentleman from Ontario [Mr. Chesebro], that as at present arranged, the Attorney-General is one of the judges of this class of claims. In the first place, he is a member of the canal board, who have appellate jurisdiction over the determination of the canal appraisers, and in many cases original jurisdiction, in cases sent to them by the Legislature. I have also to say in addition, that so far as my knowledge extends for the past twenty years in the history of this State, the Attorney-General of the State never has appeared as the defender of the interests of the State before the canal officers of the State. The defense has occasionally been done in this wise. The commissioner having in charge the division upon which, or within the limits of which, the claim has arisen, has the right, under the statute, and I think it is also incumbent upon him (though the duty has not always been performed) to see to it that the interests of the State in that regard are protected, and that either he himself, or some attorney for him, should be present upon the part of the State at the hearing of these claims before the appraisers, so as to see that justice shall be done to the State as well as the individual. Now, in this matter I trust, that if we establish this court of claims, we shall establish with it a special officer, whose entire duty shall be to see to these matters of claims, which is a specialty entirely different from almost any of the other ordinary pursuits of a lawyer. Another thing: this court must of necessity be, to a certain extent, a traveling court, going to places where the damages are alleged to have taken place, and there viewing the premises. The officer, who shall be a solicitor of claims, must necessarily attend those examinations. Another thing: if we are undertaking, as I suppose we are, to copy after the precedent of the court of claims of the United States of America, which, as a matter of course, has a solicitor of claims, there we have an At-

torney-General of the United States, and there we have a separate officer, a solicitor of claims, who appears on the part of the United States before the court of claims. For all these reasons (and many more which might be mentioned) it seems to me that it is proper he should be an officer whose duties would be strictly confined to the business of this court. I trust we can find, after the establishment of this court and the guards we shall throw around the rights of the State as against the claims coming up from time to time, that in two or three years, at the outside, the great business of this court will have been done. I hope we shall provide by this amendment to the Constitution, in which we create this solicitor of claims, that the Legislature shall have power, whenever the time shall come that his services are no longer needed, to abolish the office. Under this arrangement, I trust the amendment of the gentleman from Ontario [Mr. Chesebro] will not prevail.

Mr. MAGEE—I shall vote against striking out the provision which provides for a solicitor. While I am opposed to the multiplication of State officers, still I am decidedly opposed to imposing upon any officer duties beyond his mental and physical capacity to discharge. I want every State officer to discharge his own duty as far as possible personally, and not by proxy. I want to hold him personally responsible. I want to give him power to discharge his duties and hold him responsible for the manner in which he discharges them. My friend from Ontario [Mr. Chesebro] says the Attorney-General, the law officer of the State, has an assistant as a deputy, and has power to make more deputies, and if he has not the Legislature will give them to him. That is the great objection to the whole feature. I want one officer connected with this court of claims, if we are to have one, who will be equal in capacity to the Attorney-General, whose only business shall be to attend to the duties imposed upon him, and who shall be held responsible for those duties. I do not want to cast this duty upon the Attorney-General, to distribute it among his friends and have a dozen or more assistants, none of whom, perhaps, would feel bound to discharge the whole duties of the position. I am decidedly opposed to any disposition of this subject which will not place that court of claims and this solicitor upon independent grounds, and give them power and hold them responsible for the manner in which they discharge their duties. I will not detain the committee by any lengthy remarks. The Attorney-General is to be elected I believe by the people, and the court of claims is to be appointed by the Governor and Senate. Now, why bring in conflict two classes of officers appointed and elected by different powers? Let us, if we have a court of claims, have a competent law officer whose exclusive duty it shall be to attend to the interests of the State.

Mr. GREELEY—I will make no speech, but I ask the gentleman from Ontario [Mr. Chesebro] and the Convention to consider what I have drawn, and see whether they will not accept it:

SEC. 14. The Attorney-General shall be authorized to appoint an additional deputy, whose office shall continue for two years and as much

longer as the Legislature shall decide to be necessary, and such deputy shall be known as solicitor of claims, and shall, under the direction and control of the Attorney-General, take charge of and defend the interests of the State in all cases brought before the court of claims.

Mr. VERPLANCK—I have drawn an amendment similar to the one read, and I ask the attention of the gentleman from Westchester to it:

"Until the Legislature shall otherwise direct, the Attorney-General shall appoint an assistant, whose duty it shall be to take charge of the interests of the State in all matters depending before the court of claims, under the general direction of the Attorney-General. His compensation shall be fixed by law, and he shall hold his office during the pleasure of the Attorney-General."

This is almost identical with the amendment of the gentleman from Westchester [Mr. Greeley], except that his amendment limits the term of the office to two years. The main object is to have one law department in the State, and the Attorney-General responsible for everything connected with that department. I therefore propose that he shall have the appointment of the officer whose duty it shall be to take charge of matters before the court of claims under his direction. I think this is a course to which no one will object, because the gentlemen who oppose the report of the committee admit that there must be some person who shall have charge of this business. I concur with the gentleman from Ontario [Mr. Chesebro], that this matter, together with all matters of the State relating to its legal business should be left in one department. I hope, after the pending amendment is disposed of, either the amendment of the gentleman from Westchester [Mr. Greeley] or the amendment I have suggested will be adopted.

Mr. STRATTON—I am opposed to both of the amendments now before the committee, and in favor of the original article proposed by the standing committee, preferring that with the amendment to be proposed by the gentleman from Chemung [Mr. E. P. Brooks]. We have determined here that we will have a court of claims, and we seem to be unanimous that that court shall have a solicitor, a law officer who shall have charge of the interests of the State in all matters that shall come before that court. It therefore seems to me now to be only a question of how that officer shall be constituted. And here are two theories, the one is that he shall be appointed by the Governor, by and with the advice and consent of the Senate; and the other that he shall be appointed by the Attorney-General. It seems to be conceded also by, as I think, a majority of those who have spoken upon this question, that the Attorney-General cannot by any possibility give to this office of solicitor any personal attention or any kind of supervision whatever; that if he appoint a solicitor for this court of claims that the solicitor will be as independent of any supervision by the Attorney-General as he will be of any other power of the State. I prefer to leave the appointment of a solicitor to this court to the Governor and the Senate, subject to the

action of the Legislature afterward under the amendment to be proposed by the gentleman from Chemung [Mr. E. P. Brooks]. I think we have a responsible party to look to for the appointment of a proper officer in that case; in the other we intrust it to an independent State officer, the Attorney-General, and which would be the only duty he would be able to perform in connection with this court. He nominates his man, and he alone, without the advice and consent of anybody but himself. I prefer the Governor and Senate.

Mr. LANDON—As a contribution to the common fund of suggestion, in relation to this matter, I have drawn the following amendment, which I propose for the consideration of the gentleman from Ontario [Mr. Chesebro], and which I hope he will consent to add to the end of his amendment: "He," that is, the Attorney-General, "may direct the district attorneys of the several counties to defend the State before this court in any proceeding originating in their respective counties." This provision will make the Attorney-General the law officer of the State in respect to these matters, and will give him the power to direct the district attorneys of the several counties to take charge of the interests of the State in their respective neighborhoods. A district attorney will be better able to procure testimony in his own county than one who is not acquainted with the neighborhood. The danger which now exists, that the State will suffer because the testimony in its favor is not produced, will thus be obviated.

Mr. CHESBRO—What do you suppose it will cost the State under that regulation?

Mr. LANDON—I do not propose it shall cost anything; it shall be the duty of the district attorneys to defend the State in these cases.

Mr. VAN CAMPEN—As the question has been pretty well debated, I suppose the opinion of the Convention is settled. In my opinion the recommendation of this committee is the very best possible thing that can be done for the interests of the State. If we had no system of canals in this State we should not require a court of claims; if we did not require a court of claims, we should not want a solicitor. In my judgment, without knowing all the reasons that have induced the gentlemen to make this recommendation, or all the grounds over which they have traveled, it is in all its parts the wisest possible provision that can be made to protect the interests of the State and do justice to all its citizens. I hope the propositions made here by gentlemen are not influenced by the fact, that they may think their chances will not be as good for places under this proposition. I hope it is not that which influences them. I hope it is done in the interest of the State. But I fear, and am satisfied it is not for the interest of the State to accept the proposition made by gentlemen to strike out the section, or to amend by putting this duty under the direction of the Attorney-General. The importance of this officer is equally as high as that of Attorney-General, or even the judges themselves. It is not possible for the Attorney-General to take charge of this matter and do justice to it. It is

not possible even for him to direct it so that justice will be done to the State. I hope the Convention will determine this question. If we appoint the judges I hope we will appoint the solicitor; then they will be part and parcel of the same body. If one is appointed let the other be appointed.

Mr. DALY—I think it would be wiser to adhere to the report of the committee. Much might be said with respect to the amendment of the gentleman from New York [Mr. Gerry]. The last proposition shows the importance of adhering to the report of the committee. What would be the result of appointing the district attorneys of the State to defend the State in the several counties? What are these claims? They arise generally in the towns and counties along the line of the canal. To defend actions of that nature an officer should be well informed in respect to that great public work: he must have a large amount of information connected with the subject of claims and the manner in which those claims are got up. Not only is the nature of the claims brought against the State exceedingly various, but our statute books every session show from thirty to fifty bills passed in respect to such claims. Those claims are assigned, in many instances, and prosecuted for the benefit of the assignee. The amendment of the gentleman from Ulster [Mr. Schoonmaker] contemplates a migratory court—a court which travels through the counties of the State. My idea of a court of claims is a court established at Albany, with power of the judges to proceed to particular places and inspect the damage. I suppose the labor in that respect will be confined almost principally to the canals. I took occasion this morning to examine our statutes, and nearly all the claims upon our statute books are claims arising from canals. What we want, therefore, is an officer specially acquainted with this business—one whose duty it shall be to make himself thoroughly informed upon all matters in respect to it, that he may take care of the interests of the State with a proper watchfulness and vigilance.

Mr. GERRY—Will the gentleman allow me to ask him whether he supposes an officer appointed by the Governor would be more or less liable to corruption by persons having unfair claims against the State, growing out of canals, than an officer elected by the people on a general ticket?

Mr. DALY—I have already expressed my opinion on that subject in respect to the appointment of the Attorney-General. I am in favor of the appointment of all State officers and I do not propose to argue that question again. I have stated all I propose to say in this Convention on that subject. I approve of the recommendation of the committee in that respect because I think there will be more care in the selection of an officer than would be the case if he was nominated by a State convention. I may be wrong in that respect but such is my judgment. I think it would be very unwise to leave this matter to the Attorney-General, for the reasons which have been so fully summed up by the gentleman from Onondaga [Mr. Alvord]. The strongest reason in my opinion is that from the very duties of the

Attorney-General, this duty would devolve upon the deputy. I think of all other duties, as this involves the payment of money and appropriations of the public funds or adjudication in the court of claims, it is important that in this respect the State should be defended by an officer who will himself alone be responsible. If it is given to the Attorney-General he must of necessity appoint a deputy, and that deputy is made responsible to the Attorney-General alone. I think the better way would be to have the officer distinctly elected as an independent officer, and appointed by the Governor, or if you please, as proposed by the gentleman from New York [Mr. Gerry], appointed by the Attorney-General. We would then have him acting under a sense of responsibility. All my experience upon that subject (and it is very considerable in a large city), is that it is far better to have a man responsible for all he does and so placed that he cannot shift the responsibility upon another. In conclusion, I think the better course would be to adhere to the suggestion of the committee, for there is not much difference, in my judgment, between the one and the other, the suggestion of the committee and the amendment proposed by the gentleman from New York [Mr. Gerry].

Mr. HISCOCK—I desire to express my entire approval and confidence in the plan suggested by the gentleman from Schenectady [Mr. Landon]. I believe I state a fact to which every gentleman on the floor will agree that in all the localities from which these claims have arisen, and with which the people find so much fault, the popular sentiment of the locality is against the allowance of these claims. It is not very frequently, I might say, it is very rarely the case where the award of the appraisers meets the approval of the people. As a general rule it is a popular belief in the counties and cities on the line of the canal where claims have been, that they have been excessive, and that the damages awarded have not been sustained to the extent allowed to the claimants; but that they are a matter of speculation. Therefore, even if this popular belief is unfounded, as it very likely is, still, in my judgment, if this is left, to a certain extent, to the district attorneys of the counties, these gentlemen, feeling the responsibility that they must feel, coming in contact, as a matter of course, with this public sentiment existing in their counties, will pay more attention to the trial of these claims, and the procuring of proper evidence to resist them than any gentleman who may be brought from an outside county, and who comes there unacquainted with the circumstances or with the inhabitants, and therefore not so likely to be influenced to vigilance by this public sentiment to which I have referred to commence *de novo* to try a claim. The gentleman from New York [Mr. Daly] has objected to the district attorneys of the different counties being called to Albany or to places where this court of claims may sit for the purpose of trying them. As I understand the provision, it is made incumbent upon the members of this court of claims to "view the premises." So far as the canal claims are concerned, they are, in a majority of instances, for damages to real estate.

And I apprehend the alleged abuses are in the allowance of "land damages." And this court of claims being migratory the same practice will obtain, adopted by the canal appraisers. The witnesses, in the vicinity of the alleged damages, will be called upon to testify at some point near to and when the premises are being examined by the court. Therefore it will occasion no inconvenience to the district attorneys of the respective counties who, feeling to its full extent their responsibility to their constituency, of neighbors and friends, will defend against these claims effectively, and I have no doubt more satisfactory results would be reached.

Mr. SEYMOUR—I hope the amendment of the gentleman from Schenectady [Mr. Landon] will not prevail. I am in favor of the report as it stands, providing for the appointment by the Governor of a solicitor to the court of claims. The great trouble has been in relation to these claims that the State has never been properly represented. While the Attorney-General is the general law officer of the State, and has well represented the State in his particular field of duty, yet I have known claims of the greatest importance to go before the tribunals with really no person adequate to represent the State. And that is one reason why the State has been—I will not say defrauded, but wronged out of such large sums of money by these claimants. The object of the committee was to establish a court that would pass upon these claims judicially. We have many men of great ability and integrity with whom we could trust this power, but the most important thing of all, if this court is to be efficient, if it is to act with proper discretion and with a due regard to justice between the State and the claimants, is that we should have a man of the very first quality—legal talent and knowledge, of skill and of integrity as the law officer for the people in this court. The court will sit and claimants will be there preferring their claims for large amounts, and will be sustained by counsel of the first legal ability in the State. I think if the State is not represented before that court by a man of adequate talents and integrity the whole system will be a failure; it will be worse than a failure. We had better have no court whatever than not to have a good court or not to have the people properly represented in that court by one of the ablest counsel in the State. It is said the court is to be somewhat migratory in its character. It is to go to the different counties of the State and examine the localities in reference to the claims brought forward. The officer who is to represent the people should go with the court, and be prepared, from personal inspection and examination of the localities where the facts arise, to represent the interests of the State and to protect them. In my opinion, that officer should be appointed by the Governor. The Governor is held responsible for a proper care of the interests of the State generally, and he should be particularly held responsible where the appointment of an officer to look into any particular department of the State is devolved upon him. I hope the committee will adhere to this provision, and adopt the report of the committee in this respect.

Mr. BELL—Having provided for a court of claims, it is all-important that we should provide some one to defend the State in this court. My first opinion was that it was the province and duty of the Attorney-General to take charge of the interests of the State before this court of claims, he being the proper law officer of the State. I have a repugnance against creating any unnecessary new officers; I would rather see the number of officers in the State diminished than increased. But it appears, from what has been said and from personal conversation with the Attorney-General, that it will be impossible for him to attend to these claims; that his duties already sufficiently occupy the time of that department with its present force, and that it will be necessary to intrust the interests of the State, in regard to these claims, to some other officer, who should be possessed of sufficient skill and activity to defend the State against the payment of improper claims. After hearing the arguments that have been made for and against the creation of this new office, I am of the opinion that we had better adhere to the report of the committee and adopt the section substantially as it is in the report, with the amendment of the gentleman from Chemung [Mr. E. P. Brooks], giving the Legislature the power over the whole subject, under the following restrictions, to wit: that whenever, in the opinion of that body, these claims shall be sufficiently disposed of to render it no longer necessary, the office may be abolished; that previous to that time the officer may be suspended for want of efficiency in protecting the interests of the State. I think that these two points are provided for in the amendment which the gentleman from Chemung [Mr. E. P. Brooks] has read and will offer whenever an opportunity presents itself.

Mr. A. F. ALLEN—I am in favor of the court of claims; I have voted for it thus far; but, unless we can have a competent officer as counsel and solicitor, I shall vote against it when it comes up in Convention. If this Convention shall decide to have those duties performed by the district attorneys of different localities, or by some other agents appointed here and there, I shall vote against the court of claims in Convention. Unless we can have a competent man, and a man of judgment a man of skill, a man that will give his attention to the prosecution of these claims, as the representative of the State, we had better abandon the whole thing and go back to the point from whence we started.

Mr. TAPPEN—I desire to say to the gentleman from Schenectady [Mr. Landon] that if he will accept an amendment whereby the county treasuries, where these damages have accrued, shall be made to pay whatever damages may be awarded, it will be a proposition that will find much favor on this side of the chamber. [Laughter.]

The question was announced on the amendment of Mr. Ketcham.

Mr. KETCHAM—I really hope, with the addition of the amendment suggested by the gentleman from Chemung [Mr. E. P. Brooks] that the section as recommended by the committee will be adopted. I concur entirely with

gentleman from Chautauqua [Mr. A. F. Allen] in regard to the necessity of this officer to be connected with the court of claims. While I am unwilling to be implicated in the creation of an office, which is to last without change for twenty years whether we want it or not, I think that the interests of the State before the court of claims, must be protected, if protected at all, by the action of an officer, such as is proposed by the report of the committee. The court of claims is to take, as I understand it, all the business that now devolves upon the canal appraisers; and I apprehend that where excessive awards have been made against the State by the canal appraisers, if such have been made, nearly if not quite all cases of improper allowances made, have resulted from the want of some officer as attorney, to look after the interests of the State in the investigation of claims. The canal appraisers go to the localities and give notice that on such a day they will hear claims. The claimant goes there with a good lawyer, with his case all prepared and a wonderful degree of latitude is allowed in the examination of witnesses, generally with one of their neighbors on the stand, whose feelings and interests are all against the State and in favor of the claimant; and oftentimes there is presented before the board of canal appraisers, and will be before this court, a statement of facts by witnesses which it is impossible for them to rebut; and it is impossible for them to get at the facts without some officer whose business it is to look at the testimony on the part of the State and prepare the case for trial. I think, myself, that, as a general thing, with the present board of canal appraisers, whose fairness and integrity cannot be too highly complimented, individuals have suffered more frequently than the State; but that the State has suffered in some instances there is no doubt; and I think it has suffered almost always for want of some officer like this solicitor of claims, whose special business and duty it shall be to protect the interests of the State on the trial of the claim before the board. Those cases where the State will need the intervention of such an officer, grow almost entirely out of claims against the State for canal damages. Unless we enter upon an additional enlargement of the canals, these claims will, as I understand, in a few years be pretty nearly disposed of, when the services of that officer will not be needed. But considerable experience in the prosecution of claims before the canal appraisers has satisfied me of the indispensable necessity for some officer to look after the interests of the State, not designated or supplied by the canal appraisers as they have heretofore been obliged to do, on the spur of the moment and without the time for preparation. With the limitation and addition of the section which is suggested by the gentleman from Chemung [Mr. E. P. Brooks], I shall support the section as introduced by the committee, and really hope that it may be adopted; but if no provision of that kind is made, and no officer of that kind is to be appointed, I shall be obliged to vote against the proposition establishing a court of claims when it comes up.

Mr. GERRY—A single word in reply to the suggestions that have been made; and I shall be exceedingly brief. In the first place the Attor-

ney-General has one department only, and that is the representing the people in matters of law. Consequently any act performed by any of his deputies is within his province. If it is left to the Governor and Senate to appoint this solicitor to this court of claims, to represent the people of the State, the Governor will throw the responsibility on the Senate if anything goes wrong, and the Senate will refer the responsibility to the Governor, and between the two the solicitor will be wholly irresponsible to any one.

Mr. GREELEY—Question! question!

Mr. GERRY—I thank the gentleman from Westchester [Mr. Greeley] for the attention with which he has listened during the few minutes I have occupied the floor. It is much easier for some persons to write newspaper editorials and personal biographies than to comprehend intelligently constitutional amendments. I will add one further suggestion, and then leave the matter for his further reflection and vote. It seems to be assumed that the Attorney-General of the State is incompetent to perform his duties. Now, I deny that assumption entirely. There has never been a word of complaint against any Attorney-General for the twenty years that have elapsed since the adoption of the Constitution of 1846; and I see no reason why the whole of this matter may not be left to the Legislature, because the Legislature have the power to establish such deputies for his assistance as the exigencies of any case may require. It is conceded by the advocates of the measure on this floor, at the present time, that this office of solicitor should only be in existence for the space of one or two years. The amendments that have been suggested by the gentleman from Westchester [Mr. Greeley] and the gentleman from Schenectady [Mr. Landon], and the gentleman from Erie [Mr. Verplanck] interfere, substantially, with the action of the Legislature. It is not, in any sense, a question for us here to determine, as to what deputies the Attorney-General shall have. It should be left to the Legislature to regulate as they may see fit; and, so far as the exercise of the power of the Attorney-General over his own deputies is concerned, I see no reason why he should not be allowed to select such deputies as he may see fit. There is something in the name of Attorney-General which carries with it a magnetic influence, which does not at all apply to a solicitor, or a man who fills the position analogous to that occupied by the officer of a similar name at Washington. The dignity of the court of claims will be affected by this analogy and the court itself sink into a similar condition to that of the present court of claims at Washington, if the prosecuting officer attached to it resembles in name of office the corresponding functionary at the latter place. It is looked upon as a *quasi* judicial institution only. I therefore shall vote for the amendment of the gentleman from Ontario [Mr. Chesebro]. I shall move to strike out the section, because I think that is the easier method to remove the difficulty, but at present I shall vote for the amendment of the gentleman from Ontario [Mr. Chesebro].

The question was put on the motion of Mr. Chesebro, and it was declared lost.

Mr. E. P. BROOKS—I move to amend by adding the following:

"And such solicitor may be removed by the Governor for incompetency or neglect of duty, upon the recommendation of said court; and whenever, in the judgment of the Legislature, the office of solicitor of claims shall be, or become, unnecessary, they may abolish the same by law."

Mr. RATHBUN—I rise to say merely in regard to that amendment that I heartily approve of it, and the members of the committee present concur with me in that opinion. I hope it will be adopted and passed.

The question was then put on the motion of Mr. E. P. Brooks and it was declared carried.

The question was then put on the motion of Mr. Gerry to strike out the section, and it was declared lost.

Mr. VERPLANCK—I move to amend by adding the following as a substitute:

"Until the Legislature shall otherwise direct, the Attorney-General shall appoint an assistant whose duty it shall be to take charge of the interests of the State in all matters depending in the court of claims under the general direction of the Attorney-General. His compensation shall be fixed by law, and he shall hold his office during the pleasure of the Attorney-General."

I shall occupy the committee a single moment. Heretofore the State has not been represented before the board of canal appraisers, committees of the legislature or other boards to whom such claims were referred. The investigation of these claims does not require great legal ability, and it is not a difficult matter for the Attorney-General to select a person perfectly competent to take care of these claims although he may not be a gentleman of the highest legal attainments. My object is to have a single head to the law department of the State; and under this amendment the Attorney-General can select an assistant, who shall have the charge of this business under the general direction of the Attorney-General, and be responsible to him. The Attorney-General can, in difficult or extraordinary cases, appear himself before these courts and can attend to the matters on appeal before the court of appeals, business which cannot be attended to by this officer, who must travel about the State with the court for the purpose of viewing premises where damages have occurred. If this proposition is adopted you can have a competent man appointed by the Attorney-General, removable at his pleasure, the office to continue so long only as the Legislature shall direct; and thus the whole business can be disposed of to the entire safety of the State without adding a new department to the government.

The question was put on the amendment of Mr. Verplanck, and it was declared lost.

There being no further amendments, the SECRETARY proceeded to read the fifteenth section, as follows:

The Legislature shall not—

Mr. T. W. DWIGHT—I move to strike out the words "public officer," in the fourth line. The object of that motion is that this section may not interfere with the plan reported by the Judiciary Committee in respect to the compensation of

judges. That committee have provided that the compensation of judges shall not be diminished during their continuance in office. That is what we wish to accomplish; and we desire to postpone this subject until the report of the Judiciary Committee comes up for discussion. I ask, therefore, that these words be stricken out.

Mr. RUMSEY—I imagine that the gentleman from Oneida [Mr. T. W. Dwight] scarcely desires to leave the question as to all public officers open. If he desires to except judicial officers he can do it by adding at the end "except judicial officers."

Mr. T. W. DWIGHT—I am willing to accept that.

Mr. REYNOLDS—I move to amend by striking out the words "except as otherwise provided in this Constitution." It seems to assume that this Convention will make an exception in favor of judicial officers. I do not know that that will be done.

Mr. SEYMOUR—I wish to call attention to this fact that there is no provision in the Constitution, nor do we suppose there will be any, to raise the salaries of judicial officers. There is nothing said about it; but there is a provision against cutting the salaries down. The gentleman's amendment as he first proposed it being placed at the end of the section will accomplish what he desires. It should be placed there in order to effect that object.

Mr. T. W. DWIGHT—I inadvertently overlooked that point, and therefore, I cannot accept the amendment of the gentleman from Steuben [Mr. Rumsey].

Mr. RATHBUN—I am satisfied that this amendment is right, and such members of the committee as are present are satisfied with it also.

Mr. SEAVER—I move to insert after the word "service," in the second line, the same words that have been inserted in the fifth line. It is important that that should appear in both places in the same relation.

Mr. RUMSEY—That clearly is not necessary, from the language of the section.

The question was put on the amendment of Mr. Seaver, and it was declared lost.

The question was then put on the amendment of Mr. T. W. Dwight, and it was declared carried.

Mr. SCHOONMAKER—I move to strike out the word "contractor," in the fifth line. I am opposed to having the compensation of the contractor increased after the service has been rendered. The section as read will authorize the Legislature to increase the compensation of the contractor after the service has been rendered.

The question was put on the amendment of Mr. Schoonmaker, and it was declared lost.

Mr. VAN CAMPEN—In a portion of this section it provides that there shall be no compensation granted to a person after the contract is made and completed. I move to strike out the portion after the words "relating thereto" in the second line. My reasons for offering this amendment are these: There are no periods in business when there does not arise this condition of things. A man may contract with another, and who may

take the contract in good faith, and who may go on and faithfully perform that contract; and it may happen it may turn out that he has done it for one-half of its value. In justice and equity he should be entitled to and should receive a fair consideration for all the service he has performed as any individual. If such a case should occur on the part of the State, I should certainly be in favor of giving him a fair extra compensation.

The hour of twelve o'clock having arrived, the PRESIDENT resumed the chair and the Convention adjourned until Monday, at seven o'clock P. M.

MONDAY, September 2, 1867.

The Convention met, pursuant to adjournment, at seven o'clock P. M.

Prayer was offered by Rev. M. GRIFFITH.

The Journal of Saturday was read by the SECRETARY, and was approved.

Mr. C. C. DWIGHT presented the memorial of John S. Fowler and others, citizens of Auburn, praying for the abolition of the body known as the Regents of the University.

Which was referred to the Committee on Education.

Mr. HARRIS presented a similar memorial from Theodore Humphrey and other citizens of Albany.

Which took a like reference.

Mr. C. L. ALLEN presented a memorial from Rev. J. C. Forsyth of Salem, Washington county, for the same object.

Which took a like reference.

Mr. OPDYKE—I have received a plan of government for the city of New York, prepared by the Citizens' Association of that city, to present to this Convention. That association was entered into by prominent citizens for the purpose of aiding in correcting abuses in the government of that city. I approve of some parts of the plan submitted, and of other parts I do not approve; but I ask that it be read to the Convention.

The SECRETARY proceeded to read the document, as follows:

The basis or general plan for the government of the City of New York, submitted to the Constitutional Convention by the Citizens' Association.

1. The common council shall consist of two boards: a board of aldermen and a board of councilmen.

2. The board of aldermen shall be constituted as at present.

3. The board of councilmen shall be composed of five members from each councilmanic district, who shall receive a salary of \$500 each per annum, in lieu of carriage hire and all other expenses.

The qualifications of members of the board of councilmen shall be the payment, for two years previous to the election, of taxes on property of the taxable value at least of \$30,000.

This qualification shall be additional to those at present existing.

The qualification of electors of this board shall be the payment, for two years previous to the election, of taxes on property of the taxable value of at least \$5,000.

This qualification shall be additional to those at present existing.

4. All ordinances and resolutions, involving directly or indirectly the expenditure of money, or the disposition of the corporate property, shall require the votes of three-fourths of the members elected to each board, but no ordinance or resolution passed by one board shall be acted upon by the other board before ten days shall have elapsed.

5. The mayor shall be elected as at present, or shall be chosen in such other manner as the Legislature, from time to time, may provide.

6. The mayor shall possess an absolute veto power over all ordinances and resolutions of the common council.

He shall hold his office for two years, and shall receive a salary of \$15,000 per annum.

The mayor, each head of department, and every member of the common council of the city of New York, shall be liable, upon the complaint of three freeholders, to be examined before a judge of the supreme court, in respect to any alleged delinquency, in the manner provided by the laws of 1866, for the examination of members or officers of the board of health.

7. All county, city, town, village, or other officers whose election or appointment is not provided for in this Constitution, shall be elected by the electors of such counties, cities, towns, villages, or districts, or of some division thereof, or appointed in such manner as the Legislature may direct.

8. The mayor of the city of New York shall possess the power of removing, for cause, the commissioners or head officers of all boards and departments established therein, or in districts including said city, and all other officers in said city or districts appointed by the Governor or Legislature, except judicial officers, opportunity for being heard being given to such commissioner or officer.

9. The mayor shall possess the power to appoint and to remove the corporation counsel, and all other heads of departments in the local government, whose appointment or removal shall not be otherwise provided for by law.

10. The Governor of the State, by and with the advice and consent of the Senate, shall appoint the comptroller or chief financial officer of cities; such officer shall hold office for six years unless sooner removed by the Governor.

11. The commissions and boards established by the Legislature in the city of New York, or in districts embracing the same, shall make quarterly reports to the mayor and common council of said city.

12. A vote or resolution of censure by the common council of the city of New York upon any such commission or board established in the said city, or in a district embracing the same, shall necessitate an investigation into the affairs thereof by the mayor of said city.

13. The powers and duties of the board of supervisors of the county of New York are hereby

transferred to the mayor, aldermen and commonalty of the city of New York, and the said board of supervisors and all distinctions between the city and county of New York are hereby abolished, and the corporation now known as the mayor, aldermen and commonalty of the city of New York shall hereafter be known as "the mayor, aldermen and commonalty of the city and county of New York."

14. All annual taxes to be raised from the estates in the city and county of New York shall be authorized by local juries of tax payers as follows: Two hundred and fifty tax payers, paying taxes on the property of taxable value of not less than twenty thousand dollars, shall be summoned by the mayor of the city, from among whom, in the presence of the presiding justice of the supreme court, twenty-four shall be selected by lot, who shall sit as a jury.

Before them every branch of the local government, including all boards and commissions, shall be by law compelled to present their budgets, and any tax payer may appear and oppose the amounts asked for, giving his reasons for so doing. A majority of the jury shall determine, after hearing all sides, the sums necessary to be raised for all local purposes, in the city and county of New York, and their decision shall be final.

15. The district attorney of the city and county of New York shall be appointed by the Governor, with the advice and consent of the Senate, and shall hold office during the pleasure of the Governor.

16. All judicial officers, in the city and county of New York, shall be appointed by the Governor, with the advice and consent of the Senate, and shall hold office during good behavior.

17. The mayor, aldermen and commonalty of the city and county of New York are prohibited from making donations of the public moneys or property.

18. There shall be created in the city of New York a department to inaugurate and maintain a system of wharves and piers commensurate with the wants of said city.

19. There shall be created in the city of New York a department or board of public works, into which shall be consolidated the street department and the Croton aqueduct department, to have the exclusive construction, custody and care of all public works in said city, except the wharves and piers.

20. The Legislature shall make it a penal offense for any officer of the corporation of the city and county of New York to receive to his own use, directly or indirectly, any interest or pecuniary consideration upon or from the money of said corporation in his custody, and suitable provisions shall be made for depositing said funds in the bank or banks in the city of New York (giving adequate security therefor) that shall agree to allow the said corporation the largest percentage or interest thereon.

21. The existing checks, in the charter, upon corrupt legislation, should be retained.

22. Persons carrying on business in the city of New York, and paying taxes therein, but residing elsewhere, shall have the right to vote at municipal elections in said city, and for such purpose

shall be considered as residents of the districts in which their places of business are located.

Respectfully submitted,

James Brown, Peter Cooper, Benj. W. Bonney, Jas. Boorman Johnston, Edwin Hoyt, Murray Hoffman, Wm. M. Vermilye, Nathaniel Sands, Willard Parker, Geo. F. Noyes, J. F. D. Lanier, Robert L. Stuart, Benj. D. Silliman, Alex. Hamilton, Jr., John Taylor Johnston, John E. Williams, James M. Constable, Samuel S. Constant, Joseph F. Daly, A. R. Wetmore, Le Grand Lockwood, John A. Weeks, Moses H. Ginnell, Geo. S. Coe, William D. Morgan, Jacob A. Westervelt, H. S. Terbell, Chas. N. Talbot, William H. Guion, Barnett L. Solomon, Wm. A. Booth, William B. Dinsmore, Chas. Tracy, Horatio Allen, Samuel Willets, Theodore W. Riley, Paul Spofford, Thos. J. Powers, James Lenox, Richard M. Henry, Robert Colgate, James K. Place, William H. Fogg, Seth B. Hunt, Geo. A. Wicks, Thos. H. Faile, Paul N. Spofford, William Wood, Moses G. Baldwin, Peter Moller, Howard Potter, Stewart Brown, Allan McLane, Chas. H. Marshall, John S. Williams, Chas. H. Liddington, Matthew P. Read, Joseph W. Alsop, John H. Sherwood, William Bloodgood, William F. Cary, David Stewart, William Oothout.

Committee appointed by the Citizens' Association to prepare a basis or general plan for the local government of the city of New York.

New York, September 2d, 1867.

The document was referred to the Committee on Cities.

Mr. GOULD—I move that the document be printed for the use of the Convention.

Mr. CHESEBRO—I object. As I understand it is printed now in pamphlet form.

Mr. GOULD—I do not insist if it is printed.

Mr. LEE presented a memorial asking for the abolition of the Regents of the University.

Which was referred to the Committee on Education.

Mr. ENDRESS—I have here a similar memorial from the citizens of Livingston county, and perhaps it is proper that I should say I have read the names of the signers, and they are gentlemen of the very highest character and responsibility in the county.

The memorial took a like reference.

Mr. KRUM presented a similar memorial, signed by Mr. John Van Voorhees & Co. and sixty others, of Schoharie,

Which took a like reference.

Mr. SMITH presented a similar memorial from citizens of Amsterdam.

Which took a like reference.

Mr. WALES offered the following resolution, and asked that it be laid over:

Resolved, That the Committee on Revision be instructed to so amend section five of the article on the organization of the Legislature, as amended and adopted by the Convention, that the members of the Legislature to be elected on the fifth day of November next ensuing, shall be entitled to receive for their services the same amount of pay as is provided to be paid to members of the Legislature to be elected under this Constitution.

Which was laid on the table at the request of the mover.

Mr. S. TOWNSEND—I call up for consideration the resolution I had the honor to offer on the sixth of June, and which will be found on page 29 of the Journal.

The SECRETARY proceeded to read the resolution as follows:

Resolved, That the President of this Convention appoint a committee of one from each judicial district, for the purpose of examining and reporting to this Convention, whether in their opinion, under the provisions of the second section of the 13th article of the existing Constitution, this body is constitutionally called.

Mr. S. TOWNSEND—Under the report made by the Committee on the amended Constitution, on Friday last, I think it proper that this should go to the same Committee of the Whole to which that report was referred, and I make that motion.

There being no objection, the reference suggested was ordered.

The Convention again resolved itself into Committee of the Whole on the report of the Committee on the Legislature, its Powers and Duties, etc., Mr. BARKER, of Chautauqua, in the chair.

The CHAIRMAN announced the pending question to be on the amendment of Mr. Van Campen to the fifteenth section, to strike out in the second line, from and including the word "agent," to the word "into," and from the word "agent" to the word "contractor" in the fifth line.

Mr. VANCAMPEN—With the permission of the Convention, I have decided to withdraw the amendment.

Mr. HALE—I move to amend by striking out the words "public officer," in the fourth line.

Mr. T. W. DWIGHT—That subject was disposed of, and the words "except judicial officers" inserted.

Mr. HALE—Then I withdraw my motion.

There being no further amendments, the SECRETARY proceeded to read the sixteenth section, as follows:

SEC. 16. The Legislature shall not sell, lease, or otherwise dispose of any of the canals or salt springs of the State, but they shall remain the property of the State and under its management forever. The aggregate quantity of land now connected with the salt springs shall not be diminished.

Mr. BELL—Inasmuch as several members of the Committee on Salt Springs have also been on other committees more important, that committee has not been able as yet to give the subject of this section such attention as they desire; and therefore we ask that this section may be deferred by the Committee of the Whole until that report is made.

Mr. RATHBUN—I rise for the purpose of asking that that section be laid aside for the purpose stated.

Mr. BELL—As it also embraces the subject of canals, I would ask that it be laid aside upon that ground.

There being no objection, the consideration of the section was laid over.

The SECRETARY then proceeded to read the next section, as follows:

SEC. 17. The Legislature shall provide by law for making all the common schools within this State free, and requiring all children in the State to be educated.

Mr. RATHBUN—I rise to ask that that may be passed, and referred to the Committee on Education, where it properly belongs.

The CHAIRMAN—There being no objection, it will be passed over.

Mr. RATHBUN—The next section, giving to the Legislature authority to confer on supervisors powers of local legislation, embraces a subject which has been acted upon by the Convention, and I move that that also be passed.

Mr. BECKWITH—It should be stricken out.

Mr. RATHBUN—I have no objection; I move to strike it out.

The question was put on the motion of Mr. Rathbun, and it was declared carried.

The SECRETARY read the next section, as follows:

SEC. 18. The Legislature may declare the cases in which any office shall be deemed vacant, when no provision is made for that purpose in this Constitution, and shall provide for filling vacancies in office, and in case of elective officers, no person appointed to fill a vacancy shall hold his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.

Mr. GREELEY—It seems to me that this section does not provide for the contingency it contemplates. The year expires, and yet no successor is qualified. This is the difficulty to be obviated by this section; and I move to add to it the words, "provided a successor shall have then been duly qualified." I think the section is defective in that it does not provide for this. Public injury may often occur from an office being vacated on the thirty-first of December, and nobody provided to fill it. I would prefer, however, that the chairman of the committee would make the proper amendment.

Mr. RATHBUN—This is a section of the old Constitution precisely; and the Legislature have power to, and will, of course, provide for the difficulties suggested by the gentleman from Westchester [Mr. Greeley].

Mr. BECKWITH—I would like to make a suggestion. In my own county the town meetings are held in March. Soon after the March town meeting the office of the justice of the peace became vacated and his successor was appointed. It was supposed his incumbency would continue until next town meeting, in March following. But the Constitution rendered the office vacant on the first of January; and there was a second vacancy before a town meeting. We had to go the Legislature to get a law passed to ratify the acts of the justice of the peace and sanction what he had done after the first of January. If the section could be amended to meet that case I should like to have it done.

Mr. RATHBUN—I do not see how that could happen under section 5.

Mr. BECKWITH—It did happen, under the old Constitution.

Mr. RATHBUN—I mean section 5, of the Constitution of 1846. That section reads:

"The Legislature shall provide for filling vacancies in office; and in case of elective officers, no person appointed to fill a vacancy shall hold his office by virtue of such appointment longer than the commencement of the political year succeeding the first annual election after the happening of the vacancy."

I suppose, in the case of a town officer, where a vacancy should happen, and an appointment should be made, the person elected by the people would enter upon the duties of his office on the first of January thereafter.

Mr. BECKWITH—Perhaps so.

Mr. RATHBUN—Those elections being in the spring, it would carry it over to the first of January in the next year.

Mr. BICKFORD—I will relate a fact in my own experience in this matter. A justice of the peace died in our town soon after entering upon the duties of his office. A town meeting being held in February, he was elected, and commenced his term of office the first of the next January, and in the March thereafter he died. I was appointed to fill the vacancy; but, as the Constitution stood, the appointment only extended to the first of the next January. The town meeting was not held until the next February; so that from the first of January until the middle of February, there was nobody to hold the office, and nobody could be appointed. No vacancy happened or occurred at that time, and as the previous appointment could only extend until the first of January, there was really no provision for an appointment from the first of January until the town meeting was held.

Mr. RATHBUN—The mistake that occurred in that case was a perfectly natural one. The distinction was not taken, evidently, between the election of town and county officers; if it had been a county officer, the result would have been as stated by the gentleman from Jefferson [Mr. Bickford]; but if they had applied the same rule laid down in section 5 to the annual election of town officers, it would have carried it over to the right time; so that there is no difficulty whatever. If you regard the town election as the annual election spoken of in the section, then it is all right; and if applied correctly to the annual election of county officers, it brings it out right in both cases exactly, for the January next succeeding the election of county or town officers.

Mr. BICKFORD—The town meeting was in February, and in the March after the next town meeting the justice died. Of course the election could not be held by the people until the next town meeting. The appointment would only extend until the first of January, and therefore from that time until the middle of February there is no way whatever of supplying a justice of the peace.

Mr. RATHBUN—The trouble was this: if the gentleman will give his attention, he will see how the matter stands. The party died in March, the election was held in February. The party dying would have taken his office on the first of January following.

Mr. BAKER—No, he had already entered

upon it for the term of four years commencing on the first of January before he died.

Mr. RATHBUN—Very well; if that appointment was made, it would run over until the next person to be elected would take office on the first of January next after such election.

Mr. BICKFORD—He was not elected, and his place could not be filled until the next town meeting.

Mr. RATHBUN—He would hold it not only until the town meeting, but beyond that, and until the January next succeeding. That is the object of that section.

Mr. BICKFORD—He will not hold his appointment longer than the commencement of the year next succeeding the first happening of the vacancy.

Mr. RUMSEY—The section of the Constitution refers to the next annual election at which the officer could be elected. In case of justices, it would be the town meetings.

Mr. BICKFORD—It is not so construed and is not so understood, that he shall hold office for a year and a half by appointment.

Mr. BECKWITH—I think that the provision is objectionable for another reason. If the election means the town meeting, then they cannot, if they elect a person to fill a vacancy, when it was in fact a vacancy, take the office until the first of January afterward, which would be almost a year. The person enters upon the duties of his office on the first of January; the town meeting is to be held in February or March; he dies after the town meeting; then a person is appointed, and that person will hold not only through that year, but clear through the next year, so that at the town meeting or election in February or March, the vacancy cannot be filled until the January afterward, which I think is objectionable. I think it should be filled to take effect immediately after the election.

Mr. RUMSEY—The only difficulty in making up a provision of that kind is this: that the town meetings are held at the pleasure of the towns in the several counties. There is no definite time established, and you must either make a provision as it is made here or else you must make a provision that a justice of the peace elected to fill a vacancy shall take his office directly after the election, in which case it would be impossible to appoint a justice of the peace by any other authority for a definite time, owing to the different times at which these elections are held.

Mr. GREELEY—I offer this amendment:

Strike out all after the word "offices," in the fourth line, and insert, "each person appointed to fill a vacancy shall hold the office until a successor shall be chosen at the ensuing election and duly qualified according to law."

I do not see that any statement made here has obviated my objection, that successors may be duly chosen, yet may, from some cause, be hindered from accepting or qualifying. The incumbent is thrust out, although no successor appears to take his place, and great public damage may occur from the want of some officer duly qualified. You have said absolutely that, on a certain day, this man appointed to fill a vacancy shall go out of office. The chairman of the committee tells us

that they have provided for this. They certainly have not. If you say that, on a certain day, no matter whether a successor be qualified or not, the incumbent shall vacate the office, the Legislature cannot ignore that fact—cannot deliberately violate a provision of the Constitution; and I propose that it shall so read that the outgoing incumbent shall hold office until his successor may, whether at a regular or special election, have been duly elected and qualified according to law.

Mr. SCHOONMAKER—It appears to me the section is right as it is:

"In case of elective officers, no person appointed to fill a vacancy shall hold his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy."

It leaves it to the Legislature to fix a shorter time, but it provides that they shall not authorize him to hold it for longer than that time. They have power to fix a shorter time. It leaves it entirely with the Legislature, where it ought to be.

Mr. GREELEY—Suppose there is no successor qualified. The incumbent, we say, shall not hold beyond a certain time; but the office may be one of importance, one that needs to be continuously filled. Now, there is no successor qualified to take the place. Why should not the incumbent hold over until a successor appears, and says, "Here I am with my credentials to take the office."

The question was put on the amendment of Mr. Greeley, and it was declared adopted.

Mr. SPENCER—I propose to amend by striking out all after the word "Legislature" in the first line, and to including the word "and" in the third line. The reason for striking out this is that it is entirely unnecessary. In our article upon the Constitution of the Legislature we have provided that all the legislative power of the State shall be vested in a Senate and Assembly, and that includes the very grant of power which is conferred here. In addition to that the section further specifies that the Legislature shall provide for filling the vacancies of office, and this provision implies all that is expressed in the preceding clause. I will say further that this clause which I move to strike out is not in the Constitution of 1846.

Mr. RUMSEY—The gentleman is entirely mistaken. If he will look at the eighth section of article 10 he will see it has precisely these words, "The Legislature may declare the cases in which any office shall be deemed vacant, when no provision is made for that purpose in this Constitution."

Mr. SPENCER—The gentleman is right; I had overlooked it.

The question was put on the amendment of Mr. Spencer and it was declared lost.

Mr. SEAVER—I move to amend the section by changing the word "each" in the amendment of the gentleman from Westchester [Mr. Greeley] to the word "any," so it will read "any officer," instead of "each officer."

The question was put on the amendment of Mr. Seaver, and it was declared carried.

There being no further amendments the SEC-

RETARY proceeded to read the next section as follows:

SEC. 19. Provision shall be made by law for the removal, for misconduct or malversation in office, of all officers (except judicial) whose powers and duties are not local or legislative, and who shall be elected at general elections, and also for supplying vacancies created by such removal.

Mr. BICKFORD—Does not the word "not" belong in the fourth line after the word "shall," "who shall *not* be elected at general elections"?

Mr. RUMSEY—It is exactly a copy of the old Constitution in that regard.

Mr. BICKFORD—Does not the word "not" belong there?

Mr. RUMSEY—No, sir; it does not.

There being no further amendments the SECRETARY proceeded to read the next section as follows:

SEC. 20. When the duration of the term of any office is not provided for by this Constitution, it may be declared by law, and if not so declared such office shall be held during the pleasure of the authority making the appointment.

There being no amendments the SECRETARY proceeded to read the next section as follows:

SEC. 21. The Legislature shall not exempt any property from taxation except churches, burial-grounds, and that of free colleges and incorporated academies, and of all common or public schools organized pursuant to the laws of this State and subject to the supervision of the superintendent of public instruction.

Mr. RATHBUN—Another committee having in charge that branch of the subject, I agreed to propose to the committee to allow this section to be passed over.

There being no objection the section was passed, and the SECRETARY proceeded to read the next section as follows:

SEC. 22. The political year and legislative term shall commence on the first day of January.

There being no amendment the SECRETARY proceeded to read the next section as follows:

SEC. 23. The Legislature may from time to time make general laws for the formation of corporations and alter or repeal the same, and all corporations hereafter to be created (except those for municipal purposes) shall be formed under such general laws. The Legislature shall not hereafter alter or amend the charter or extend the powers of any corporation (except municipal corporations) by any special law.

Mr. ALVORD—I move to strike out that section, inasmuch as we have already passed on the entire subject.

The question was put on the motion of Mr. Alvord, and it was declared carried.

The SECRETARY proceeded to read the next section, as follows:

SEC. 24. The term corporation, as used in this Constitution, shall be construed to include all associations and joint stock associations or companies having any of the powers and privileges of corporations not possessed by individuals or partnerships. All corporations shall have the right to sue and be subject to be sued in all courts, in like cases as natural persons.

Mr. RUMSEY—That has been passed upon. I therefore move to strike it out.

The question was put on the motion of Mr. Rumsey, and it was declared carried.

The SECRETARY proceeded to read the next section, as follows:

SEC. 23. No railroad shall hereafter be constructed or operated within any of the cities or incorporated villages of this State, until the consent of the local authorities of such city or village shall be first obtained for that purpose, and also the consent of the owners of at least one-half in value of the property on the line of the streets through or over which the same shall be constructed, be previously had and obtained for that purpose; or in case the consent of such property owners be not obtained, then with the consent of the general term of the supreme court of the district in which such road shall be located to be first obtained; such consent to be obtained and authenticated in such manner as the Legislature, shall by general law for that purpose provide. The franchise allowing such road to be operated, shall be sold at public auction to the highest bidder, after three months' public notice, describing the route of such railroad, in the State paper, and in such newspapers in the city or village where said railroad shall be located as the Legislature shall direct. The whole avails of such sale shall belong to the city or village in which said railroad shall be located.

Mr. RATHBUN—I am under a pledge to another committee to ask that that section may be passed over.

There being no objection the consideration of the section was postponed.

The SECRETARY proceeded to read the next section as follows:

SEC. 24. Every bill which shall have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve he shall sign it, but if not he shall return it with his objections to that house in which it shall have originated, which shall enter his objections at large on its journal and proceed to reconsider it. After such reconsideration two-thirds of the members elected to such house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of all the members elected to such house, it shall become a law notwithstanding the objections of the Governor. But in all such cases the votes in both houses shall be determined by ayes and noes, and the names of the members voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature by its adjournment prevent its return, in which case it shall not be a law. And no bill shall become a law unless approved and signed by the Governor during the continuance of the session of the Legislature at which the same was passed, or the same shall be returned by him with his objections and the same be reconsidered and passed as aforesaid.

Mr. ALVORD—I do not think there is any need of our taking up our time on matters which have been passed upon. I move the section be stricken out.

The question was put on the motion of Mr. Alvord, and it was declared carried.

The SECRETARY proceeded to read the next section, as follows:

SEC. 24. The Legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payment by any person, association or corporation issuing bank notes of any description.

Mr. RATHBUN—I move to strike out the section just read.

The question was then put on the motion of Mr. Rathbun, and it was declared carried.

The SECRETARY proceeded to read the next section, as follows:

SEC. 24. No office shall be created for weighing, gauging, culling, or inspecting any merchandise, manufactures, produce or commodity whatever, but nothing in this section contained shall affect any office created for the purpose of protecting the public health or the interests of the State in its property, revenues, tolls or purchases, or of supplying the people with correct standards of weights and measures, or shall prevent the creation of any offices for such purposes hereafter.

Mr. WALES—I would suggest to the Chairman of the committee that the word "measuring" has been left out of the first line of this section as it is in the Constitution of 1846. I offer the following amendment:

The SECRETARY proceeded to read the amendment, as follows:

After the word "whatever" in the third line, insert "but such business shall be pursued under license and not otherwise. The Legislature shall, at its first session after the adoption of this Constitution, pass laws for licensing persons to engage in and pursue the business of weighing, measuring, gauging, culling, and inspecting such commodities shall be made compulsory," so that it shall read, "Sec.—. No office shall be created for weighing, gauging, culling or inspecting any merchandise, manufactures, produce or commodity whatever; but such business shall be pursued under license and not otherwise. The Legislature shall, at its first session after the adoption of this Constitution, pass laws for licensing persons to engage in and pursue the business of weighing, measuring, gauging, culling and inspecting merchandise, manufactures, produce, lumber and other commodities; and prescribing the oath and other responsibility under which such business shall be conducted. Every person who shall comply with the terms prescribed for obtaining such license shall be entitled thereto. No such weighing, measuring, gauging, culling or inspecting such commodities shall be made compul-

sory. But nothing in this section contained shall effect any office created for the purpose of protecting the public health or the interests of the State in its property, revenue, tolls or purchases, or of supplying the people with correct standards of weights and measures, or shall prevent the creation of any offices for such purposes hereafter.

Mr. RATHBUN—I wish to make a verbal correction, suggested by the gentleman from Sullivan [Mr. Wales]. I ask that the word "measuring" may be added after the word "gauging" in the first line.

There being no objection the correction was made.

Mr. WALES—The Constitution of 1846 abrogated the entire code of inspection laws then existing in the State; and very properly, as I think, swept out of existence a large number of offices that had been created for the execution of those laws. But the necessities of trade were greater than even constitutional law, and, while the Constitution abolished all the responsibilities of inspection, the practice remained, and still remains in active operation. It is for the purpose of throwing some kind of responsibility around this business of weighing and inspecting the various commodities constantly seeking our markets, that I propose this amendment to the very excellent report of the committee. The Convention of 1846 had two laudable objects in view, in their action upon this subject. First, the large body of officers necessary for the proper execution of the inspection laws, were all appointed, and could be used for political purposes; and it was for the purpose of abating or avoiding any abuses in this direction that these offices were abolished. Second, the compulsory clauses of the inspection laws, gave them the features of monopoly, and were very odious, and, I may add, in many cases very onerous. To break up this compulsion and monopoly, was the other object of that Convention. Now this amendment accomplishes both these desirable objects, and at the same time, re-enacts the equally desirable responsibilities of inspection, repealed by the Constitution of 1846. I ask this committee to look at this subject with care and give it due consideration. Perhaps no single section in your Constitution, will reach such vast and varied interests, as this one. It affects every producer and every consumer, in the State and thousands outside of it. Go into the marts of trade and you will find the weigh-master, the measurer, the inspector there just as he was in 1840. In most cases he is a necessity—in all a convenience. His marks go out into all the land and, to the ignorant, carry the insignia of official responsibility. He is the umpire between parties whose interests come in conflict, and acts frequently, in presence of only one of those parties. He stands between the producer and the merchant, between the merchant and the consumer. Ought not accountability to accompany such very important transactions? As it is now, jealousy, distrust and suspicion attend these inspections—unjustly in most cases, but the natural consequence of the want of responsibility. Mr. Chairman, from ten to fifteen years' experience under the system

of 1821, and twenty years' under that of 1846, both as merchant and manufacturer, have convinced me that, while it was wise to abolish compulsory inspection and annihilate a thousand offices, it was unwise to leave voluntary inspection entirely without accountability. So fully am I convinced of this, that, were it possible for me to do so, I would gladly assume the responsibility of passing this amendment.

Mr. GREELEY—I concur entirely with the gentleman who has just addressed the committee [Mr. Wales] in the end he aims at. The inspection laws, as they existed under the Constitution of 1821, incited enormous abuses. I believe they were at war with the Constitution of the United States. Here is a man in Ohio who makes flour; he sends that flour to New York on its way to Liverpool; perhaps he has sold it in Liverpool already. I insisted then, and I insist now, that the claim of the State of New York to take that flour and bore a hole into each barrel, and take out some of the flour, and charge the owner for an inspection that was of no service whatever to him or to any one else interested, was an outrage that needed to be abolished. Yet, I think the Convention of 1846 went entirely too far. What was wrong was, not the fact of the inspection, but the fact that the property was compulsorily inspected, when neither the State nor the purchaser, nor any party whatever interested in the production or sale or consumption of that flour, was consulted in or benefited by the operation. But it seems to me, the gentleman from Sullivan [Mr. Wales] has given us entirely too many words; he has legislated much more than was necessary on this subject. I propose, as an amendment, to strike out all down to and including the word "but," in the third line, and insert as follows: "The Legislature may provide for the weighing, gauging, or measuring of produce or merchandise; but no such weighing, gauging or measuring shall be made compulsory." When you strike out the compulsory feature, there is nothing more that need trouble any one. I know that the grade or relative value of New York superfine flour has fallen in the market very considerably since inspection was abolished, and there are other abuses. I am assured that in the city of New York to-day the average shortness of weight in coal is something like two hundred pounds to a ton. One man who, having bought what was sold for a ton of coal, had it weighed over and found that there was but little more than sixteen hundred pounds. A gentleman assures me he has weighed many tons of coal, as they were sent him, and the lowest short weight of any one was seventy-five pounds, while the highest reached nearly five hundred. I hope we shall not prohibit our people from protecting themselves hereafter against any such imposition. If persons choose to buy flour without scrutinizing the weight, that is their own business, but certainly there is no harm in allowing the Legislature to provide a voluntary inspection, and then purchasers can employ inspectors or go without the benefit of their services, at their option.

Mr. ALVORD—I cannot for the life of me see any necessity for putting in the Constitution of the State any such provision. I have always

agreed that so far as regarded the action of the Constitutional Convention of 1846 in this matter it was in the right direction. Before then, inspectors were appointed upon almost everything in the light of heaven which men dealt in. Inspectors were appointed by the State, with large fees attached to the office. The result was that people became indignant, and the Constitutional Convention of 1846 wiped out the thing entirely. What is the proposition on the part of the gentleman from Westchester [Mr. Greeley] and the gentleman from Sullivan [Mr. Wales]? Nothing more than the people have a right to-day to do, nothing more than what a straightforward business man does—virtually to protect his interests every time he buys a commodity to any extent. But, if we go on here as we propose, the Legislature may pass laws by which certain inspectors can be licensed to perform this work, and certain outside parties may or may not be called upon to do the work. If the gentleman goes to New York and buys a barrel of flour and is not satisfied that it weighs one hundred and ninety-six pounds, or a ton of coal and is not satisfied that it weighs two thousand pounds, let him put it on a scale and see whether it is a proper weight or not. Every man has a right to put what he buys upon the scales for himself and see whether or not it has the proper weight. The party in the one instance who bought coal and in the other who bought flour, if he is furnished with short weight, can punish the party of whom he bought, for a violation of the rights of the purchaser and the duties of the seller. Parties can test the scales for themselves; no man can hesitate to permit them this privilege. It is a question which at once concerns the reputation of a man in business. If he gives a false measure it is bruited about in the community, and in the end he loses more than the gain of an occasional few pounds of coal upon a ton will benefit him. We should leave this to the old doctrine of *caveat emptor*. Let a man's eyes be his guide in regard to this matter. Let that determine the whole question. To-day in the city of Albany there are by common consent (and I understand it works admirably) inspectors of lumber, men who were mutually agreed upon by the seller and buyer as inspectors of both the quality and measurement of lumber. It is a sort of mutuality of understanding between the buyer and the seller, and they get along harmoniously. In my county, where there are large quantities of wood used, there is by common consent some one or two persons in the community who stand ready with their sticks to measure wood. The buyer and seller agree that they shall be arbiters between the two. There is no necessity for putting into the Constitution a provision to this effect. It is so wherever men look to their own interests, wherever they deal largely in commodities of this kind. There is no difficulty in the future as there has been none in the past under the Constitution of 1846, but what these things will regulate themselves. I see no necessity for putting into the Constitution a provision by means of which the Legislature may constitute inspectors, whose services must be paid for by the people, whether those services are required or not.

Mr. WALES—I believe I understand this business, or some portions of it, very well. Take the business that I am in—the manufacture of sole leather. The country manufacturer takes the hides from New York, and agrees to manufacture them into leather at ten cents a pound; he sends a dozen or fifteen hundred pounds of leather daily to the city. It is impossible he should be in the city of New York to see that leather weighed when it arrives there. Who inspects it? It may be the owner himself, or his hired man, and it is a source of constant irritation between the manufacturer and the owners. There is no responsibility about it. Again, each side of this leather is marked. The leather manufactured in the town in which I live and in the town adjoining amounts to nearly three-quarters of a million of dollars a year. Every side of this leather is marked and inspected, and goes back into the country and sold—one, two or three sides in a place. A man buys ten or fifteen sides of leather. How is he to get back a few pounds of which he has been cheated? I speak not of the manufacturer, because he is better able to take care of himself than those who use this leather a hundred miles from the city of New York. Take tobacco which comes in hogsheds to the city of New York; it is impossible for the purchaser to see the tobacco. The inspector knocks off the hoops and takes out two or three staves, and, beginning at one end of the hogshhead, takes out a few leaves of tobacco, and so samples through the entire hogshhead. These samples are tied into a bundle, sealed, a paper is attached, and on that paper he puts his marks corresponding with the marks on the hogshhead. The tobacco is sold by these samples. Any person can see at a glance, if there is no responsibility about the person who draws these samples, there is room for great frauds. So it is through the whole course of manufactures. You may take that of flour, for example; take any article you please. There is no accountability or responsibility about this inspection. I ask to create no monopoly; I ask to create no expense; but I do ask that property that is inspected should be inspected by an inspector acting under an oath and such other responsibility as the Legislature shall choose to name. Another thing; objection is made to this amendment of mine because it is too long. I do not understand that we are here to make a long or short Constitution, but such a one as the exigencies of the case requires. If we are here to make a short Constitution, then let us say that the Legislature, at its next sitting, shall have power to provide for the government of this State by law, and we will go home.

Mr. GREELEY—My objection to the amendment, as moved by the gentleman from Sullivan [Mr. Wales], was not simply that it was long, but that it was unnecessarily long, and that the same valuable end he sought, was to be attained with less than half the number of words he used. I do not object to words in the Constitution if they are necessary to convey the meaning, or confer power, or guard against abuses; but when no such end is attained by them, it is a recommendation to me as between two rival articles, that one is a line shorter than the other. If they equally accomplish the end, the difference

of a line shorter is to me a decided recommendation. Now, consider the remarks of the gentleman from Onondaga [Mr. Alvord]. He asked why we wanted to put anything in the Constitution on this subject. I do not want to put anything into the Constitution. What I want is to keep out a restriction which, in its extent, in my judgment, has proved pernicious. The Convention of 1846 meant right, but went too far, farther than the abuses which it sought to overthrow, thereby doing a wrong while meaning to do nothing but right. Why, says the gentleman do you not put the article on the scales? Why, I order a ton of coal on the way down town to my business, to be sent to my lodging. Some time in the course of the day it arrives. I cannot be there to wait for that coal. I have to attend to the business by which I earn that coal. It is driven up there and dumped. There is no weight, no measure, no responsibility whatever. The coal merchant sends me as much as his conscience dictates to be requisite. I ask only that there be some officer to whom I might say, if I choose to do so, "Measure that ton of coal." I really do not know how, even if I should stay at home, I could find out whether I had a full ton or not. You may say, "Go to some public scale." If there be any, my coal must be driven, perhaps, a mile or a mile and a half and weighed, and then brought back and dumped, and the cart again taken to the scale and weighed, and its weight deducted from the total weight to ascertain how much coal I had received. This is not practicable. What we want is, that there shall be proper officers who shall be umpires between the buyer and the seller whenever the buyer chooses to call them in. I believe short weight and short measure to be a very general abuse in New York. I do not propose to compel everybody to bring their articles to be weighed or measured, but simply to have officers at the command of the public—officers who are ready at the call of the buyer. I desire to have them paid as they were formerly. I used to have my wood measured for sixpence a load—I believe that was the price. The measurer stood ready to measure that load, and give me its just measure for sixpence. I should like to have such an officer now, with regard to coal and to everything else, and I should like to pay him. I do not see why the Convention obstructively should say, "You shall not have any such officer."

Mr. S. TOWNSEND—The Convention will not consent to indirectly create a large addition to the number of existing officers by their approval of this proposition. On this floor it has been said that among the objects for which the Convention of 1846 was convened, was the relief to the public from the burden of the support of what was then deemed an unnecessary system of recognizing a horde of persons, under political appointment, to discharge duties that private citizens would perform in a far more satisfactory manner. It has also been here stated that this Convention, in its official address to the people after it adjourned, solicited itself upon the fact that it had abolished some thousand offices of that character; and it is not too much to say that a large portion of the mercantile and business vote that approved that Constitution was influenced by that important feature

in it. In our previous action upon this article, we have dropped from constitutional recognition several existing State officers, and we all concede that a further effort will be made in that direction. As early as the session of the Legislature of 1841, I personally moved that the compulsory feature of the inspection laws should be removed. It did not succeed at that session, but my impression is that in a few years subsequent this feature entered the statutes of our State. In the discussions that took place in the last Convention, it was conceded that, to very considerable extent, the same objections attached to the non-compulsory laws that yet required a large corps of officers to increase the patronage of the Executive, as applied to the system of compulsion. It was deemed as giving a preference and status to a class of men that would enable them to monopolize the profits of a business that private citizens stood ready to discharge as well, or even better, as the business community generally believed, than the subordinate class, of mere politicians, that generally held these offices under the favor of the one or other of the leading parties of the State. To illustrate how incompetent some of the applicants, for these largely lucrative offices, were—offices, the perquisites of some of which yearly were worth, in the city of New York, from ten to thirty thousand dollars—Governor Bouck used to relate that in relation to the applicants for the inspectorship of pot and pearl ashes, that he was surprised that at one period among the ten or twenty applicants, he discovered that a very considerable portion of them did not know the one from the other. He had tested personally that fact by a couple of specimens that he had preserved in a drawer in the executive chamber. The immense expense of this system, in fees and salaries, some five hundred thousand dollars over the State, to say nothing of the extravagant charges for storage, labor, etc., which, when articles did not meet a ready sale, would sometimes, when products were low, consume from one-fifth to one-third of their value. This, when brought under the view of the Convention of 1846, induced them to abolish the entire system. This was accomplished, too, in the face of an organized opposition of the inspectors, and privileged interest, marshaling in their service some of the leading members of that body. The political power of that interest in the city of New York, as I happen to well know, had for many years previous attempted to control the nominations and elections, at times, of those sent to represent the city in Senate and Assembly at this Capitol. These officers, many of them controlling numerous employees, were a power with the nominating committees, and it was only by the force of great personal influence and consequent popularity, that even in those now much lauded palmy days of comparative political purity, that men beyond their control and influence were elected and continued by the electors of the city of New York for years in our legislative halls. Their influence, no doubt, was perniciously felt in other localities of our State, where the value of these officers was such as to cause them to be sought for by leading and skillful politicians.

I can here say that I have known that members, then associated with me in those days, owed their nominations solely to some inspector's influence, whose favor they were pledged to repay by their efforts to secure him a re-nomination through the Executive and Senate. The gentleman from Westchester [Mr. Greeley] in his difficulty as to short weight in coal, was probably seeking a seller at a short price. The remedy for all such cases lies in our own hands. Plenty of honorable, competent men are to be found in the coal business, and every other pursuit in the city of New York, and doubtless in all our cities and business centers, who, from the character they have attained as fair dealers—a character sometimes enforced from the fact that they continue the business their predecessors had favorably formed for them almost a century ago. They can be safely trusted as doing business upon the principle that "a merchant's word should be his bond," and who, in fact, upon the merest pecuniary consideration, cannot afford to cheat in the matter of weight or sample. Even the gentleman from Sullivan [Mr. Wales] will admit that he could have found in the city of New York (in the "swamp" for instance) an honest dealer that would have accounted to him faithfully for his hides in weight, etc., without the interposition of an official inspector.

Mr. WALES—I never was cheated.

Mr. TOWNSEND—So I supposed, from the natural business tact that I feel assured my respected friend possesses. Again, in those golden days of official inspections—every one who has a personal knowledge of business at that era knows that while the shrewd manufacturers of flour for instance, simply placed his product upon the standard of the inspectors, at New York city, others dealing upon the well earned reputation of their own brands or trade marks; the Elys and others of Rochester, and similar mills of the interior, which I now have in mind, sent to the market an article that always sold far above the price of the mere inspection grade varying as it necessarily must, from locality to locality; for occasionally these political officers were not, as I have before shown, always proficient in a knowledge of the articles they were called upon to rate. Indeed, I may safely say that the individuals that commerce has called for the past twenty years into this service, have, in efficiency and capabilities, discharged their duties more satisfactorily than those who were politically chosen for the same service. This, Mr. Chairman, is one of those questions that arise from principles and which no legislation can properly control. The immutable laws of trade inexorably govern it. The gentleman from Onondaga [Mr. Alvord] in his apt legal quotation (*caveat emptor*)—or in common parlance—"let the buyer beware" has stated the point distinctly. It was these considerations, sir, that governed a decided majority of the Convention of 1846, in coming to the conclusion they did. I have little doubt this Convention will agree with them in abolishing the whole system of inspections, measuring, etc., as they then existed.

Mr. VAN CAMPEN—It seems to me that the amendment of the gentleman from Sullivan [Mr. Wales] contains an important provision for the

commerce of this State. It seems to me that in any branch of manufacture, where the manufacturer desires to sell an honest article of a uniform quality, he would have no objection whatever to having an inspection, and more than that, I think he would desire to have an inspection, so that the article would go out with a good character. Now, the difficulty is, that in the manufacture of almost every article, there are men who desire to make a profit by passing off upon the consumer the meanest article they can for the money that they receive. Another class of men desire to manufacture the best article they can for the money. Such an inspection as is here proposed would protect the purchaser and consumer against the sharpness of a dishonest manufacturer. Especially is this true of the trade and manufacture of leather, which the gentleman from Sullivan [Mr. Wales] represents; it is difficult to get a uniform quality, and hence the necessity for inspection. It is important as well to the manufacturer as it is to the purchaser. Under the proposition an inspection is not compulsory, and it seems to me it would very soon come to exactly this, that the man who manufactures a good article, and wants to sell it, would be the first man who would go to the inspector and get the brand of a sworn officer as to the quality of the article. Why, if a man wanted to put off a bad article, he would not want an inspection. It would come to be understood that the man who refused to have his manufacture inspected, had a bad article.

Mr. ALVORD—My experience in regard to qualities and inspections is in an entirely different direction from that of the gentleman from Cattaraugus [Mr. Van Campen]. And in the days when inspection existed it was the object of the manufacturer to make the poorest article he possibly could that would pass inspection, and it resulted in this: that a manufacturer of a superior article of the same grade would get no better price for his article than that which was got by the manufacturer of the poorest article which could pass inspection. That has been the case in the history of this State and in all countries. The difficulty with regard to this inspection is this: that if we permit the Legislature to create, by licensing or otherwise, a set of officers to act as inspectors, although without any compulsion, it results necessarily and naturally in the creation of a set of officers whom you will be compelled to keep in existence. You will be compelled to use them, and they will be established all over the State, as they were previous to 1846. You will have officers from one end of the State to the other, fattening upon the business of the State, without doing anything toward producing. I trust this Convention will hesitate about doing that, and that we will follow the ordinary rules which govern men in business, and permit the employment of an arbitrator by the parties interested, if necessary, between buyer and seller. We always get them where we have large transactions in business, and there is no necessity of putting into the Constitution that the Legislature shall have power and authority to press upon a transaction, confided to a person thus employed, the sanction of a *quasi* official position dignified by the necessity of an official oath.

If you do, you will get back into the same old road that we had before the year 1846. You will have a crowd of inspectors that you will be compelled to use.

The question was put on the amendment of Mr. Greeley, and it was declared lost.

The question then recurred, and was put on the amendment of Mr. Wales, and it was declared lost.

There being no further amendments to the section, the SECRETARY proceeded to read the next section, as follows:

SEC. 25. The Legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of county judge and of surrogate, in cases of their inability or of a vacancy, and to exercise such other powers in special cases as may be provided by law.

Mr. ANDREWS—I hope that the Chairman of the committee [Mr. Rathbun] will allow this section to be passed over, as there is a provision in reference to this subject which is contained in the report of the Committee on the Judiciary.

Mr. RATHBUN—I have no objection whatever to pass it over.

Mr. ANDREWS—And the next section also should be passed over.

Mr. RATHBUN—I have no objection.

The SECRETARY proceeded to read the next section, as follows:

SEC. 25. No bill for any local or private purpose shall be introduced into the Legislature unless notice of the application therefor, stating the substance thereof, shall have been published in the State paper for twenty days before the commencement of the session of the Legislature at which such application shall be made. No such bill shall be introduced into the Legislature except during the first sixty days of the session.

Mr. GREELEY—I move to amend by striking out "twenty days," in the fourth line of that section, and inserting the words "once a week for four weeks." Four weeks or six weeks would be long enough.

Mr. RATHBUN—The section proposes this, that publication shall be for twenty days, whilst the amendment of the gentleman from Westchester [Mr. Greeley] proposes that it shall be for six weeks.

Mr. STRATTON—Once a week for six weeks.

Mr. RATHBUN—That takes too much time. It might interfere to prevent something desirable. The object here was to require such notice as would advise and inform the people of the fact of the legislation proposed, and what it was that was proposed to be done. Applications for charters, and for private legislation for the benefit of individuals are frequently made, and secured from the Legislature without any knowledge of the facts which are important to persons immediately interested; and the object of this section was that such legislation should not be tolerated, unless some knowledge or notice was given to those who are likely to be affected by it. Twenty days' notice I think would be abundant, if the notice was published so as to reach the knowledge of the parties. Six weeks might be too long, and four weeks even might interfere unrea-

sonably with legislation that would be proper, and not objectionable. I am not aware that the committee have any choice upon this subject as to the time. The object to be attained, and which they were desirous of attaining, was that public notice should be given to localities to be affected by the proposed legislation, so that if the application was not proper it might be defeated. If the Convention desire to make the period longer, there can be no objection, although it seems to me unnecessary.

Mr. BARTO—I move to add after the words "State paper," the words "and one paper in the locality affected thereby."

Mr. GREELEY—I will modify my amendment by making it read once or twice each week for eight weeks, and also in one public journal of the locality affected thereby.

Mr. ALVORD—I would ask the gentleman from Westchester [Mr. Greeley], how the people of Hamilton county would learn anything under that provision, as they have no paper published in that county.

Mr. GREELEY—it would be published in the Johnstown or Gloversville paper. I only desire that the object shall be effected, and with the least expense.

Mr. CHESEBRO—How would it stand in certain counties where papers were only published once a week?

Mr. ANDREWS—I hope, Mr. Chairman, that no such provision as this will be inserted in the Constitution.

Mr. SMITH—I hope that the last amendment will prevail. The publication in the State paper might never reach some localities, at least it would not be likely to notify all the inhabitants interested in the matter. There have been schemes passed through the Legislature, to my knowledge, within the past few years affecting localities, and affecting them very seriously and injuriously, of which they knew nothing until the schemes were beyond their reach. It seems to me very desirable that some provision should be made by which the people interested adversely in these schemes should have notice of them, so that they may be prepared to make opposition if they desire to oppose them, and not be subjected to oppressive burdens without notice and opportunity of being heard.

Mr. RUMSEY—I hope that the amendment will be adopted requiring a publication once a week for four weeks in the State paper, and in a paper in the locality to be affected by the proposition, because there are many localities where the daily State paper is not taken but where the weekly State paper is taken.

Mr. SPENCER—I would like to inquire how the locality is necessarily to be affected by a bill for private purposes.

Mr. RUMSEY—it says "local and private" purposes.

Mr. BICKFORD—I offer this as an amendment. Strike out the words "State paper for twenty days" in the fourth line, and insert "two newspapers published in the county where the applicant resides and where the local interest is to be affected, for four weeks." [Laughter.]

Mr. RATHBUN—That amendment is ample.

Mr. BICKFORD—The verbiage may not be the best that may be employed, but it conveys the idea I wish to convey. It is all useless to publish anything in the State paper. The public in the various counties affected by the proposed legislation will not be informed by it; but if published in two papers in the county, the public will be informed.

Mr. SEAVER—Will the gentleman from Jefferson [Mr. Bickford] modify his amendment so as to make the publication in the two newspapers authorized to publish the session laws?

Mr. BICKFORD—It is suggested by a delegate near me that there may not be two papers in some of the counties in the State, and I, therefore, with the permission of the committee, propose to alter it by adding "if there shall be two papers published in the county."

The question was put on the amendment of Mr. Bickford, and it was declared carried.

The question recurred and was put on the amendment of Mr. Greeley, and it was declared lost.

Mr. STRATTON—Mr. Chairman —

Mr. BARTO—I move a reconsideration of the vote by which the amendment of the gentleman from Jefferson [Mr. Bickford] was adopted.

Mr. STRATTON—I was about to move an amendment, in order to avoid ambiguity, which there seems to me there is in the section. It occurs by the use of the word "before." It provides the publication shall be made for twenty days before the commencement of the session. It may be made six weeks before. I move to strike out the word "before," and insert the words "immediately preceding."

Mr. BARTO—I withdraw my motion to reconsider.

Mr. McDONALD—I renew the motion to reconsider. I do it because I supposed I was voting for the amendment of the gentleman from Westchester [Mr. Greeley]. The Chair first declared the other lost, and I did not understand him as putting the question again.

Mr. SMITH—I hope that the motion will be reconsidered, and I think if the gentleman who offered the amendment will examine it carefully, he will see that it is not in the happiest form in which the provision could be made. The word "publish" occurs three times in a single sentence.

Mr. VAN CAMPEN—The Committee on Revision can retain the substance of it.

Mr. SMITH—But they cannot make a new provision. It seems to me that the amendment offered by the gentleman from Westchester [Mr. Greeley], as amended on the motion of the gentleman from Tompkins [Mr. Barto], would cover the whole ground. They provide that the publication shall be made in the State paper and in a local paper. Publication in the State paper, and also in the local paper, would, it seems to me, serve a better purpose than publication in two local papers and not in the State paper.

The question was put on the motion to reconsider, and it was declared lost.

The question recurred and was put on the amendment of Mr. Stratton, and it was declared adopted.

Mr. ALVORD—As we have passed, as I have

understood it, before this, and have sent to the Committee on Revision to be incorporated in the Constitution, provisions which take away from the Legislature the power to legislate upon local and private bills, and it seems to me to be entirely useless to have this section at all, I move to strike it out.

Mr. ANDREWS—I have no doubt it would be exceedingly valuable for papers in the city and country to have a constitutional provision by which the substance of local acts should be published in local papers. What is the "substance" of an act? I am unable to say what is meant by it. The "substance" of every local or private bill proposed to be introduced into the Legislature is to be published for a period of time previous to the opening of the Legislature. I ask, gentlemen, what is the construction of that language? What is the "substance" of the bill? Suppose notice shall be given of the introduction of a bill in the Legislature, and its various details. After the matter shall have come to the Legislature, they vary it in some of its essential provisions from the act proposed; then I submit it would be a question which might very properly arise in the courts whether those variations by the Legislature from the notice, was a variation in substance from the bill which had been noticed, and publication of which had been made in the local papers; because I take it that under the proposed provision, if a bill be passed by the Legislature which varies from the one the "substance" of which has been proposed, by reason of an additional provision which enlarges the scope of the bill in any material respect, or changes the character of the bill, then it is a change in the substance, and the act must fail. It would be an act by the Legislature in violation of the provisions of the Constitution. Now, another thing. Is it possible that we are ready to commit ourselves to the principle that the Legislature shall be prohibited in any case, or in any exigency, from legislating for a local or private interest unless this exigency itself has been foreseen four weeks prior to the meeting of the Legislature? We have already provided that general laws shall be passed under which all corporations shall be organized. We have already passed a law prohibiting the Legislature from allowing or auditing private claims. I think we are dangerously hampering the legislative power, if we shall insist upon the insertion of a provision of this character. At all events, if there is any time to be limited, I trust it will be a time preceding the introduction of the bill, and not preceding the commencement of the session of the Legislature. It seems to me that the guards which have been already adopted against improper action by the Legislature are sufficient, and that we had better allow the legislative power to stand now as it is, as there is a great danger in attempting to foresee all the circumstances which may from time to time render private and local legislation necessary.

Mr. GREELEY—The two gentleman from Onondaga [Mr. Alvord and Mr. Andrews] seem to differ very pointedly with regard to this question. One of them thinks that we are to have no local legislation—that we have wiped out from this Constitution all power of the Legislature to

pass local bills; whilst the other gentleman seems to think that we shall still have a large amount of local legislation. I hope that the truth will be found to lie somewhere between the two extremes. The gentleman who last addressed us [Mr. Andrews] suggested that the acts might be made unconstitutional by the Legislature varying them from the notice given of those acts by the projectors. I cannot so understand it. What those gentlemen, who bring forward a proposition for local or special legislation, are required to do, is to state in substance what they apply for. They cannot tell what the Legislature will do with their proposition. They may pass a very different bill. The projectors may say, "We want a toll-bridge over Black river, with the privilege of charging so much toll." The Legislature may make it a free bridge, or something else not contemplated in the notice given by the projectors. But what the notice is for is to advise persons in the locality affected by the legislation that is proposed, so that they may scrutinize it and see that it does not militate against their interests. It seems to me that this is a wholesome provision. I do not think that we have fixed the details just right; and, as I have been voted down in my proposition, I naturally conclude that the details are not right. [Laughter.] I still desire to have it amended to make it better than it is.

Mr. RATHBUN—This section, as it was drawn and presented, provided that no bill for any local or private purpose should be introduced into the Legislature unless notice of the application therefor, stating the substance thereof, should have been published in the State paper for twenty days. All this must be done before anything can be done in the Legislature, so that the people may know before the Legislature meets to do business what is to be done or proposed to be done. Now, that answers the objection made by the gentleman from Onondaga [Mr. Andrews], who last spoke. Now, another word in regard to the word "substance." As stated by the gentleman from Westchester [Mr. Greeley], the substance of a bill may be an application for leave to bridge a stream at a certain point, and take toll, or to amend the charter of some village or some city. Now, they may amend the charter of the city or a village, on application by anybody, or almost without it, and the people are very quietly at home, engaged in their business, and the first thing they know they have got saddled upon them a large amount of taxation, or compelled to do something they did not intend to do, and would have resisted if they had known of the application to the Legislature. It is to guard the people in all matters of that kind, that they should not be taken by surprise, that this notice is required to be given. They are entitled to know when the legislation is called for, who it is that calls for it, and what it is that they propose to do, and having learned that, they are to look out for themselves. It is in that view, and that alone, that the section was drawn.

Mr. RUMSEY—As far as the objection made by the gentleman from Onondaga [Mr. Andrews], who last addressed the committee, is concerned, I apprehend, if he will reflect for a moment, he

will find there is no force in it. When the Legislature shall have passed a law, that will be the end of any matter connected with such Legislature as a prerequisite. As an illustration, I point him to the decision of the court of appeals in a case in regard to Schuyler county. The Constitution provided that no new county should be created unless it had a representative population sufficient to entitle it to a member of Assembly. Schuyler county was created by the Legislature when the territory embraced within it had not the requisite population, and that fact was clearly proved in court, yet it was held in the court of appeals that the law was not thereby rendered unconstitutional; that it was for the Legislature to determine whether a constitutional prerequisite to their action had been complied with, and that such determination was final. The committee which reported this section did so expecting that every Legislature would so far regard a positive constitutional requirement as to see to it that notice should be in good faith given to localities to be affected by local legislation, to answer the purpose by giving notice to the persons to be affected by it, and that is all.

Mr. ANDREWS—I do not so understand the effect of the decision in the Schuyler county case, because the majority of the judges in that case concurred in the opinion that as an original question the act was unconstitutional, but on the ground that the county had been recognized repeatedly by the State, as one of the political divisions of the State, and an arrangement of districts had been made on the faith of that recognition, the court held under the circumstances that they were bound to regard the act as constitutional, although the court concurred in the suggestion that it was, when passed, an unconstitutional enactment.

Mr. LAPHAM—I desire to inquire if an amendment is now in order?

The CHAIRMAN—It is.

Mr. LAPHAM—I move then as a substitute for the entire section, except the last clause, the following:

The SECRETARY proceeded to read the substitute as follows:

"No local or private bill shall be passed by the Legislature, unless notice of the intention to apply therefor, stating the nature of the bill to be proposed shall have been published in the newspaper nearest to the locality or residence of the person to be affected thereby, for three weeks immediately preceding the application therefor, in each issue of such paper."

Mr. LAPHAM—I strike out the provision for publication in the State paper, for the reason that it is of no practical value in view of the object of this section. The object is to give notice in localities to be affected by the legislation in some form, the intention to make application to the Legislature therefor, and this will secure it. I also, as it will be seen, provide that this publication shall be made for three weeks preceding the application, not preceding the session of the Legislature, thus enabling persons who have grounds for asking legislative relief during the session of the Legislature, to provide by the pub-

lication of a notice for three weeks in the nearest paper to their residence, to make the application and secure the relief.

Mr. HALE—The substitute proposed by the gentleman from Ontario [Mr. Lapham], although it strikes me as a great improvement upon the section as reported by the committee, still is altogether more than is required in my judgment. It seems to me this section is entirely unnecessary, and that it is based upon an entirely false theory. I have not yet heard the objection raised by the gentleman from Onondaga [Mr. Andrews] answered by either of the gentlemen of the committee who spoke since he took his seat, and that is that there may be emergencies which may call for the passage of local or private bills in cases where this provision, if incorporated in the Constitution, would prevent their passage. Can we say that no emergency will arise after the commencement of the session of the Legislature, or within twenty days prior to its session, which will call for the passage of private or local bills? If the Legislature has any power left to pass private or local bills (and I suppose there is no question but it will have such power if what we have already adopted is adopted by the people), it seems to me it is very important it should not be so tied up as to prevent it from acting in all cases which may arise within twenty days previous to its session or during its session. The substitute offered by the gentleman from Ontario [Mr. Lapham] requires three weeks prior to the introduction of the bill. That of course is not as objectionable as this provision, as it gives a wider scope to the Legislature; but it seems to me that is objectionable, as it still leaves in the last part. I would ask what reason is there for saying that in no case shall the Legislature pass any private or local bill except during the first sixty days of its session? We have abolished the limitation of one hundred days. Why should we say that no legislation of a peculiar character shall be passed by the Legislature except during the first half of its session—a session which will probably be twice sixty days? It seems to me it is an entirely arbitrary provision, and one which there can be no sound reason for. Circumstances may occur after the first sixty days of the session which would render it important that some private or local bill shall be passed. We cannot foresee that no such emergency will occur, and it seems to me this section is entirely unnecessary, that the evil against which it is designed to guard is sufficiently provided against by the provisions we have already adopted. For these reasons I am in favor of the proposition of the gentleman from Onondaga [Mr. Andrews], to strike out this section.

Mr. RUMSEY—It is perfectly evident that a very large portion of the legislation of this State which has given to the Legislature an evil reputation, arises from the fact that the private and local bills have been pressed through without the persons in the locality to be affected by them understanding or knowing anything about them, and they have been pressed through under circumstances that preclude the idea of there being in fact, anything wrong in the intention of the Legislature. Some individual, greedy for the

passage of a bill for a particular purpose, comes here and urges it through, and the Legislature, ignorant that there is any valid objection to the measure, and relying upon the representations made by interested parties, with no notice to parties outside of those interests, pass it without any evil intention on their part; but when it comes to be examined by the parties interested, all sorts of wrongs are found to be perpetrated by it. It is better that things of this kind should not be done, and this provision is inserted for the purpose of giving to localities a notice of the general substance of the applications that are to be made by which they are to be affected. It can scarcely be possible that any such pressing emergency can arise anywhere as to render it necessary to pass a bill in such haste as to make it inconvenient to give the notice contemplated by this section. There are nine months of the year during which these emergencies may arise, and during which the parties may ascertain their wants and wishes and make it known to the rest of the world; but the trouble is, they do not want the parties who are to be affected by it to know their intentions, or to know that any such emergency has arisen. It is better these applications should go over to the next year, if there be not time to give the notice asked for, than that this hasty legislation should take effect; and I therefore hope the proposition, or something equally beneficial to the community, may be adopted and passed by the committee.

Mr. SPENCER—In confirmation of the views which have been presented by the gentleman from Essex [Mr. Hale], I ask the attention of the committee to a case which was stated by the gentleman from Genesee [Mr. Wakeman] a few days since, in which it was ascertained that a bill which had been passed by both houses of the Legislature was a gross fraud, and not only a gross fraud, but perpetrated a great iniquity. When that was ascertained, a bill was introduced to the lower house of the Legislature repealing the act which had been obtained, and it was passed by unanimous consent at once to its third reading and went to the other house, and was there passed in the same way within the space of two hours.

Mr. McDONALD—Will the gentleman allow me to ask him a question? If there had been three weeks' notice required, does the gentleman believe a bill containing such a fraud could have been passed?

Mr. SPENCER—Yes, sir, I do suppose it may have passed notwithstanding the publication of a notice. If this provision had been in the Constitution at that time it would have been impossible to obtain the repeal of that law. The inquiry has been suggested how, in the city of New York, a party could ascertain what newspaper would be the nearest to the locality affected by the amendment, or to the individual who made an application for the law.

The question was then put on the amendment of Mr. Lapham and it was declared carried, on a division, ayes 49, the noes not being announced.

Mr. HADLEY—There is no quorum voting. I call for the count on the noes.

The noes were again called for, and the Clerk announced 12.

There being no quorum present the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. BARKER, from the Committee of the Whole, announced that the committee had had under consideration the report of the Committee on the Legislature, its Powers and Duties, etc., and, on a division, it had been ascertained that no quorum was present.

Mr. ALVORD—I move that the roll of the Convention be called.

Mr. RUMSEY—I move the Convention do now adjourn.

The question was put on the motion of Mr. Rumsey, and it was declared lost.

Mr. FIELD—I call for the ayes and noes.

Not a sufficient number seconding the call, the ayes and noes were not ordered.

The SECRETARY proceeded with the call and the following gentlemen responded to their names:

Messrs. A. F. Allen, C. L. Allen, Alvord, Andrews, Archer, Axtell, Barker, Beckwith, Bell, Bickford, E. P. Brooks, Carpenter, Case, Cassidy, Chesebro, Clarke, Cochran, Conger, Cooke, Curtis, C. C. Dwight, T. W. Dwight, Ely, Endress, Faruum, Ferry, Field, Fowler, Fuller, Gould, Grant, Greeley, Hadley, Hale, Hammond, Harris, Houston, Jarvis, Krum, Lapham, A. Lawrence, A. R. Lawrence, Lee, Mattice, McDonald, Merwin, Morris, Opdyke, Pierrepont, President, Prosser, Rathbun, Root, Rumsey, Schoonmaker, Seaver, Sherman, Smith, Spencer, Stratton, S. Townsend, Van Campen, Verplanck, Wakeman, Wales, Williams, Young.

Mr. ALVORD—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Alvord, and it was declared carried.

So the Convention adjourned.

TUESDAY, September 3, 1867.

The Convention met at nine o'clock A. M.

Prayer was offered by Rev. A. M. O'NEILL.

Mr. BARNARD presented the memorial of J. T. Hildreth praying that no prize fighter or filibuster, or any abettor thereto, shall be allowed to hold any office of trust or honor.

Which was referred to the Committee on Preamble and Bill of Rights.

Mr. DUGANNE presented the petition of M. B. Wilson, metropolitan fire commissioner, and twelve members of engine company No. 26, New York, against donations for sectarian purposes.

Which was referred to the Committee of the Whole having the matter in charge.

Mr. FULLER presented a memorial from the citizens of Monroe county praying for the abrogation of the corporation known as the Regents of the University.

Which was referred to the Committee on Education.

Mr. E. BROOKS—I present a memorial, signed by the officers of the liquor dealers' society, praying for the prevention of restrictive legislation against traffic in distilled spirits and malt liquors. I wish to say that it represents four thousand

traders, twelve thousand employees, over fifty millions of capital and from seventy-five to eighty millions of annual business.

The petition was referred to the Committee on Adulterated Liquors.

Mr. ROOT presented the memorial of John P. Churchill and others asking for the abrogation of the corporation known as the Regents of the University.

Which was referred to the Committee on Education.

Mr. AXTELL offered the following resolution, and asked that it be laid on the table:

Resolved, That a select committee of five be appointed for the purpose of considering the expediency of making constitutional provision requiring the Legislature to provide by law for the permanent care of the disabled soldiers of the State.

Which was laid on the table.

The Convention resolved itself into Committee of the Whole upon the special orders of the day, being the reports of the Committee on Finances and the Committee on Canals, Mr. SHERMAN, of Oneida, in the chair.

The pending question was announced to be on the first section of the article.

Mr. LAPHAM—I move to substitute for the first section of the article the sixth section of the article reported by the Committee on Canals.

The SECRETARY read the section proposed to be substituted, as follows:

SEC. 6. The canal stock debt contracted prior to the first of June, 1846, amounting on the first day of May,

1867, to, \$3,265,900 00

The canal enlargement debt amounting at the time aforesaid to,.... 10,807,000 00

The floating debt loan contracted under the provisions of chapter 271 of the Laws of 1859, amounting at the time aforesaid to,.... 1,700,000 00

\$15,772,900 00

shall hereafter be known and designated as the canal debt; and the several sinking funds applicable to the payment of the said debts, amounting at the time aforesaid to the sum of \$2,010,734.35, together with the contributions to be made thereto, and the income thereof, shall be known and designated as the canal debt sinking fund.

Mr. HARDENBURGH—I would suggest to the committee that the chairman of the Finance Committee [Mr. Church], of which I have the honor to be a member, is not here, and I think it is in consequence of his not being aware of the change of the hour, which was resolved upon only last Saturday. He is in the city, and I have sent for him. It is quite important that he should be here with his budget. I do not know what motion it is proper to make. I am confident he will be here.

Mr. ALVORD—I would suggest to the gentleman to move that the committee rise, report progress, and ask leave to sit again. The motion can then be made to make reports the special order for twelve o'clock; and in the mean time we can go on and finish up the business of last evening.

Mr. HARDENBURGH—Will the gentleman make that motion?

Mr. ALVORD—I move that the committee now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Alvord, and it was declared carried.

The committee then rose, and the PRESIDENT resumed the chair in Convention.

Mr. SHERMAN, from the Committee of the Whole, reported that the committee having had under consideration the reports of the Committee on Finance and the Committee on Canals, had made some progress thereon, but not having gone through with the same, had instructed their chairman to report progress, and ask leave to sit again.

The question was put on granting leave to the committee to sit again, and it was declared carried.

Mr. ALVORD—I move that these reports be made the special order for half-past eleven o'clock to-day.

Mr. GREELEY—I hope the gentleman will move to take it up after we finish the report of the Committee on the Powers and Duties of the Legislature.

Mr. ALVORD—I will modify the motion, so as to read, "half-past eleven o'clock, or so soon as the report of the Committee on the Powers and Duties of the Legislature shall be finished."

The question was put on the motion of Mr. Alvord, and it was declared carried.

Mr. BERGEN asked leave of absence for Mr. Veeder, for one week.

There being no objection, leave of absence was granted.

The Convention then resolved itself into Committee of the Whole on the report of the Committee on the Powers and Duties of the Legislature. Mr. BARKER, of Chautauqua, in the Chair.

The pending question was announced to be on the amendment of Mr. Lapham, proposing a substitute for section 27.

The SECRETARY read the amendment of Mr. Lapham, as follows:

"No local or private bill shall be passed by the Legislature, unless notice of the intention to apply therefor, stating the nature of the bill to be proposed, shall have been inserted in the newspaper nearest to the locality or residence of the person to be affected thereby, for three weeks immediately preceding the application therefor, in each issue of such paper."

Mr. GREELEY—I wish the gentleman who makes this motion and the committee to consider one or two difficulties which this amendment raises. I desire to favor it, but I wish to see it in such form as that we can generally agree upon it. Take our city of New York. How are you to determine which paper is nearest to the person to be affected? You will find in point of fact that one-third, if not one-half, of all those local bills come from New York, or its immediate vicinity. How is it then to be determined what newspaper is nearest to the locality or the person making the application, to be affected by the application? I do not think that it is a practicable amendment. One other point. It seems to

me that there should be a provision that a bill might be passed without application in case three-fourths or nine-tenths of the members of the Legislature should unite therein, and certify that a public necessity or an imperative dictate of public justice required such an act. For example, a person has a lot of property in the custody of the State burned up, he may lose his work for the State or have his tools burned up in such a way as to make the State justly responsible. That might take place some time in the course of the session of the Legislature, or perhaps near the close of the session, and they could not pass an act to compensate him for this righteous claim of his without waiting until the next session of the Legislature, and giving three weeks' notice before it commences; and in the mean time the man might be ruined, simply because he could not get what the State honestly owed him. That debt could not be paid by the State officers until the passage of a bill by the Legislature. And there is one other thing. I do think that a notice of this kind should be published once, at least, in the State paper and a local paper. You may say that a proposition is local, and yet it may affect the interest of other parts of the State that are not suspected. You propose by this proposition to put it in a local journal, while the bill to be passed may affect not only the local interest, but the interest of other localities; and this local journal, being utterly unknown except in a very limited circle, there may be a failure of the publicity that is required. I think at least one publication in the State paper ought to be insisted upon. I desire to support the amendment if it can be altered in this way. I make these suggestions to the mover of the amendment, hoping he may so modify it that we can all unite on it.

Mr. McDONALD—I move to amend by adding after the words "shall have been" in the amendment of Mr. Lapham, the words "to be published for at least three weeks, once each week in two newspapers published in the locality to be affected, or residence of the persons to be affected, of different political parties, to be selected by the board of supervisors of the county, or the mayor of the city." The object of the amendment is simply this: According to the amendment of the gentleman from Ontario [Mr. Lapham], in cities like New York, it would be impossible to determine what paper would be selected. The object of the amendment, although inartificially drawn is this, to give to the boards of supervisors of the counties or to mayors of different cities, the power to designate two papers, each of different parties, so that everybody will be likely to get notice of the application. That is the object of the amendment, drawn hastily and inartificially. By this provision, the notice will be published in two different papers of two different political parties; and the papers in which they can look for it be known, because the board of supervisors or the mayor of the city will designate publicly the paper chosen, or the two papers chosen for that purpose, so that any person who has any desire will know just where to look. The other advantage has been spoken of before; it is this, this section only regards a local bill, therefore, it ought to provide for a local notice: a notice in a State

paper accomplishes nothing, and by giving a local notice in the papers to be designated, of different political parties, we get all the advantages and by devolving upon the board of supervisors and the mayor in the selection of these papers, we also get the further advantage that the public will know what paper to look in, and will get the requisite notice.

Mr. BERGEN—In my judgment the amendment of the gentleman from Ontario [Mr. Lapham] is proper and just. The original motion or substitute requires a publication in but one paper. Take the county of Kings. In that county there are obscure papers published, having a very limited circulation. Probably not one man out of ten thousand, probably not one out of twenty thousand ever see them. Parties applying for a local law who desire to hide their application as much as possible from the parties interested, would be sure to put the notice in a local paper that has a very limited circulation; and probably it would not be observed by the parties interested. This provision would, therefore, operate very unjustly, and I think this amendment, or some similar one should prevail. One paper is certainly not sufficient to give the requisite notice.

Mr. ANDREWS—Here is a case. An application is made by the heirs of an alien for the purpose of being authorized to inherit the property of the ancestor. One of them lives in St. Louis; another in Erie; another lives in New York, and another abroad. As I understand this amendment we have got to publish it in two newspapers in the county where the party interested in that bill resides. This would seem to me to multiply publication too much.

Mr. FERRY—I would suggest a further difficulty. There may be no two papers representing different parties in politics in the locality, so that it would be impossible to order such a publication by the board of supervisors. In cities no such difficulty would occur; but there are localities where there may be a neutral paper, and no paper at all representing a political party. I would suggest to the mover of this amendment, that he so frame it as to allow the board of supervisors to designate two papers in which it shall be published, without saying what papers. I am willing to trust each board of supervisors to make the selection of the papers for publication. That will obviate the objection raised by the gentleman from Onondaga [Mr. Andrews].

Mr. GRAVES—The statute requires the board of supervisors to designate two papers in which the proceedings of the board shall be published. They may not be political papers; there may be one of them a neutral paper. Why not so amend it as to have the notice published in the two papers designated by the board, as the papers in which the proceedings of the board shall be published. That will save all difficulty—requiring that they shall be published in two papers in the county.

Mr. ANDREWS—I would like to know what board of supervisors would have exclusive jurisdiction over the question of publication where the claimants affected by the bill live in different counties.

Mr. GRAVES—If it is to be published in two

papers in the county then those two papers designated by the board may be the ones in which the publication shall be made.

Mr. CASSIDY—The objection is this, that the law in reference to the publication in, and designation of, newspapers by the board of supervisors may be changed. There is no such provision in the Constitution; therefore, we have a mandate founded upon a law. That is the best way. I hope the whole section will be stricken out. It is perfectly illusory. It is an attempt to put a scarecrow in the Constitution against the lobby, which will have no effect. It will not prevent one single act being passed. It is wholly deceptive. No men can tell in advance what law is going to be passed through the Legislature for local, private or any other purposes. It is very much like the situation of this proposition here. A law is presented, and when it gets through the Legislature it is a very different thing. Between striking out, amending, altering and substituting it becomes utterly changed in character. We can easily imagine a law in regard to Richmond county, for instance, to prevent the erection of a hospital for fear of infection in the county; and after it is introduced, the Legislature changes it so as to establish a quarantine hospital on the island. Of what use is this notice which some one puts in the paper in advance? The law that is passed is rarely, indeed, the law that is proposed. A very simple device to relieve Broadway from travel may end in a proposition to place a railroad on Broadway. We had last year a law in relation to highways—some law of a very immaterial character—which was stricken out, all but the enacting clause, and a bill in relation to the affairs of the Central railroad substituted in its place. The Legislature is too strong, the lobby is too powerful (for it is at the lobby that this is aimed), to be circumvented by a proposition like this; and the very proposition presented here, by which it is proposed to publish those notices stating the substance of the intended law in counties, towns, capitals, etc., and perhaps abroad, shows how utterly impossible it is to provide for such things in the Constitution of the State. Let us prevent, as far as possible, this local legislation. Let us place as many safeguards as we can around it, and then do what we have to do in the end, in all governments—leave it to the Legislature.

Mr. E. BROOKS—I do not concur with my friend from Albany [Mr. Cassidy] in the conclusions at which he has arrived, in thinking it wise to strike out the section now under consideration. I think I know—and I think it is the experience of most gentlemen of observation with regard to such matters—that a public notice inserted in two of the local papers in any county of the State would call the attention of the parties in interest to whatever questions may be under consideration, and that, when their attention is drawn to those matters, they are put in a position where they know what is to be attempted, and where they can prevent, very frequently, a great wrong which is thus undertaken to be committed by parties having private objects in view. I also think it is much more important that publications of this kind should be inserted in the local papers

than in the State papers for the reason that parties in interest have their attention drawn to their local papers where it is not drawn to the papers of the State.

Mr. LAPHAM—I ask to amend my proposition by substituting the following:

“No local or private bill shall be passed by the Legislature unless notice of the intention to apply therefor shall have been given in the manner now or hereafter to be provided by law.”

Mr. McDONALD—I will withdraw my amendment.

Mr. LAPHAM—It will be seen that this amendment preserves in force the present provision of the statute on that subject, and leaves the Legislature at liberty, as experience shall suggest from time to time, to make further provision in regard to this matter of notice. I desire to add another word, sir. Allusion was made last evening to the fact that a legislative act, passed without any publication of notice as provided by the statute, had been regarded by the courts as equivalent to a repeal of the statute in that particular case, and therefore the law would be valid, notwithstanding it was passed without any notice. Now, the committee will remember that there is nothing in the present Constitution upon that subject, requiring notice in any form whatever. Therefore, this provision, making the present law applicable to such cases, and providing for further legislation, putting it in the shape of a constitutional provision, will absolutely prohibit the Legislature from passing hereafter any valid act of this character without notice.

Mr. RUMSEY—There is no use of putting that provision in the Constitution at all, because if you do, it depends simply upon the act of the Legislature to say whether any notice shall be given or not; and if the Legislature require notice to be given they may, in the very act, and in the fact of their passing the act make a waiver, or repeal of the provision of the law requiring notice to be given so far as that particular act is concerned. They may, at their pleasure, waive any legislative enactments. There is, therefore, no use in putting that in. Unless you make it a constitutional requirement you may as well leave it out.

Mr. BICKFORD—I rise to say I shall support the amendment of the gentleman from Ontario [Mr. Lapham], and hope it may be passed, notwithstanding the objections.

The question was put on the motion of Mr. Cassidy to strike out the entire section, and it was declared lost, on a division, by a vote of 37 to 45.

Mr. LAPHAM—I move to add at the close of the section these words: “and the necessity of such notice shall not be waived by the Legislature.”

The question was put on the amendment of Mr. Lapham and it was declared carried.

The SECRETARY proceeded to read the twenty-eighth section, as follows:

SEC. 28. The Legislature shall not pass local or special laws in either of the following cases;

Granting divorces;

Authorizing the sale, mortgaging or leasing of the real property of minors or other persons under disability;

Changing the names of persons;

For laying out, working or discontinuing public or private roads or highways;

For locating or changing county seats;

For legalizing, except as against the State, the unauthorized or invalid acts of any officer;

For granting to any individual, association, or corporation the right to lay down railroad tracks in the streets of any city or village;

Giving effect to informal or invalid deeds or wills;

In any case for which provision has been made by any existing general law;

And the Legislature shall pass general laws providing for the cases enumerated in this section, and for all other cases where a general law can be made applicable.

Mr. MORRIS—I wish to offer an amendment.

The SECRETARY proceeded to read the amendment as follows:

Add at the end of the section, “The Legislature shall include in the causes for granting divorces from the marriage tie, adultery, habitual drunkenness, cruel and inhuman treatment, and desertion for seven years.”

Mr. MORRIS—In offering the amendment, providing that the Legislature shall enact laws granting divorces from the marriage tie, for adultery, cruel and inhuman treatment, habitual drunkenness, and seven years desertion, I have been guided by the sincere desire to alleviate the sufferings of those who are the victims of brutal husbands, from whom release is now almost impossible; for it is well known that no crime is so difficult to prove against a person as that of adultery, which is now the only ground allowed for divorce in our State. I do not desire to discuss the religious theory of marriage, for, not having been educated as a divine, I have not been led to give the subject that close study which would enable me to occupy the attention of this honorable body profitably by doing so. But I desire to consider society as it is, and if possible to improve its condition. Regarding then, marriage, as an institution established for the good of society, the history of all ages proves that the greater the number of marriages, the better for a country. All means should therefore be employed to encourage persons to unite themselves in this union which is “esteemed honorable among all men.” By it, women are placed in the sphere where they are most to be revered, and where, if well mated, not only are they more happy than when single, but they create those homes of affection which endear men to their country and to life, which educate children in morality and which lead to industry and contentment. But such is the unfortunate perversity of human nature, that all restraints are distasteful; and in proportion to the difficulty of escaping from bondage, men are disinclined to enter it. Taking the extreme case, as it exists in France, where there is no release except by death, marriages are rare except to convey property or obtain titles. There are, of course, excellent persons who marry in that country, but they form a small proportion only of the community. I have seen it published that only one birth in eighteen is legitimate in France. In-

deed, illicit unions are so common there, that they have become almost respectable—or at least tolerated without aversion. If we may believe the newspapers, our own large cities are following in the footsteps of Paris. A gentleman with whom I am acquainted, having lost his fortune by the reverses in business produced by the war, was obliged to seek for economical lodgings and in his searches found many persons not only willing to board couples who were not married, but openly expressed a preference for them. His attention was first called to this fact in this manner: On asking "how many occupied a house," the landlady said, "a gentleman and his wife occupy this room, and a gentleman and his lady occupy that." He remarked, "I observe you say wife in one case, and lady in the other: do you draw a distinction?" She replied, "yes, and I will never again, if I can help it, have a gentleman and his wife in my house, for they are so disagreeable." His curiosity being aroused, he made many inquiries, and found this feeling to be much more general than most persons would even suspect. I relate this incident here to indicate sentiments which seem to be extending among numerous classes, and to show the necessity for some modification in the laws which shall encourage a larger number of marriages, by rendering their dissolution, for good cause, less difficult. Why are many people who live together and are not married, more happy than others who are? The explanation is that they are on their good behavior. The man knows that brutal conduct, or a neglect or indifference, would surely lead to a separation. But in many instances, when a man has a wife, he regards her as his property, and as he knows she cannot escape from him, and he is protected by the laws, he takes no pains to conceal his humors, and makes his wife his unrequited drudge. It is to be deeply deplored that this domestic tyranny is not confined to the low and ignorant; but is found also in high and fashionable circles. I know of instances myself, and I do not doubt that many of you do, also, where ladies of refinement and education have been abused and beaten by their inhuman husbands. The world rarely hears of these cruelties and domestic sufferings, for the sensitive nature of a delicate minded lady shrinks from making public the shame of her family. There is no release for such. Partial divorce, or separation, I know is allowed, but that is of little avail. Where is the man who would be willing to have his daughter or sister tied to such a brute? I should be sorry to think I have the misfortune to number such a person among my friends. Habitual drunkenness is a still greater calamity for a poor woman to endure, for it usually involves "cruel and inhuman treatment," and is attended with disgrace and idleness. It is a sin and an outrage to deny a woman a divorce from a drunken brute of a husband. Should a married person be deserted for seven years, why should that person be denied the opportunity of seeking another home? How many women there are who have been cruelly forsaken, and could have married those who would have given them good and contented homes had not the law, the hard and unfeel-

ing law, bound them to wretches unworthy the name of men. The more easily divorces are obtained, the more willing will people be to marry, and the better will married persons behave, and therefore the greater will be the happiness of homes. We should not refuse to admit facts and see human nature as it actually exists. Men and women will live together for it is intended by the Supreme Being; but if the marriage laws are too binding, a large portion of the community will prefer an immoral life to one having the responsibility of wedlock. Marriage protects women and children, and prevents the dreadful crime of infanticide. Laws for divorce always provide equitably for children, so that marriages, no matter how easily annulled, are incalculably better than illicit unions. But I do not ask in the amendment, for divorces on slight grounds; but that the Legislature shall pass laws granting them, in addition to adultery, for cruel and inhuman treatment, for habitual drunkenness, and seven years' desertion. This course is so eminently just and merciful, that I earnestly pray this Convention, composed chiefly of men who are the heads of families and who have daughters and sisters, and who have sympathy and reverence and a true regard for woman, to befriend her now by sustaining this amendment.

Mr. BERGEN—I will offer an amendment if it is in order. In the fourteenth line, after the pending amendment of the gentleman from Putnam [Mr. Morris], in the section as reported by the committee, I would add the words, "or on any public highway," so that the section will read, "Granting to individuals, associations, or corporations, the right to lay down railroad tracks in the streets of any city or village, or on any public highway." My object, sir, in this amendment is to prevent what occurred in the town in which I reside, from being repeated either there or elsewhere. The inhabitants of the town opened a highway to the city of Brooklyn for their accommodation and donated the land to the public. After making a highway and getting it in traveling order and establishing a plank-road on it for their convenience, parties came to the Legislature and were authorized to lay a railroad track and run a dummy engine. The effect of this special law has been to drive off public travel and make it dangerous also to local travel in a great measure, so that great injustice has been done to the inhabitants of the locality and to the public. They have destroyed this road, which would otherwise have been used for the convenience of the public, in consequence of this local law. If a general law of that kind was necessary to authorize the use of public highways by dummy engines, in every county in the State, every part of the State being interested in the matter, it would be a very difficult matter to have a general law of that kind passed, while a local law is easily passed. My objection to the running of dummy engines on the public highways is that they are very inconvenient and dangerous to the traveling public. I hope, therefore, that the amendment of the gentleman from Queens [Mr. S. Townsend] and the amendment also that I offered, will be adopted.

Mr. RUMSEY—It seems to me that the committee can scarcely have comprehended the na-

ture of this amendment. If it is passed in the shape in which it is presented it will prevent, in my judgment, a railroad from crossing a highway diagonally or in any other way. It is very frequently the case that a railroad cannot be built without removing a highway.

Mr. BERGEN—I will change it to make it read "along the highway."

Mr. RUMSEY—Even in that shape it is bad.

Mr. SEAVER—It appears to me that this will not affect the general railroad laws. It prevents the Legislature from passing special or local laws for this purpose. It will not prevent railroads from crossing streets or running along them.

Mr. RATHBUN—It seems to me that really there is no objection to that. This is to prevent special legislation authorizing railroads to occupy public streets or highways. It does not prevent such occupation by general laws. It leaves that question entirely open. I apprehend that is really the main point of the case.

Mr. COOKE—It seems to me there is a difficulty about this proposed amendment. If a railroad is chartered to run on a certain course, this is a special law, and when you come to a highway it will be necessary to go round it in some way, because you cannot run upon it if this amendment prevails. I do not know that there is any necessity for striking down all railroads by this Convention. It seems to me that there may be valuable improvements in railroads, and that the Convention ought not to be too fast in striking a death-blow to the whole system. I disagree with the gentlemen from Cayuga [Mr. Rathbun] and with the gentleman from Franklin [Mr. Seaver]. If railroads are chartered and not organized under a general law, why, then, we will find the difficulty that I have suggested, that the railroad is obliged to avoid the highway in every instance. It appears to me that it is far better to leave this matter in the hands of the Legislature.

The question was put on the amendment of Mr. Bergen, and it was declared lost.

Mr. ENDRESS—I wish to call the attention of the Convention to the fact that the amendment of the gentleman from Kings [Mr. Bergen] does not effect any prohibition. It simply extends this language to the public highways. If it is right that cities and villages should not have railroads along their streets, why is it not so in regard to public highways? It is merely extending the force of the section to public highways through the country.

Mr. RATHBUN—I am surprised that gentlemen will not see, when they have the section before them what the intent and object of it is. It is not the design to interfere with the question of laying railroad tracks in streets, or towns, or villages, or upon the public highways. That question is not involved. The question involved is this—that the Legislature shall pass no special act for that purpose; that is all. They may pass general laws, and regulate the whole thing by general laws. The object of the provision is to prevent special legislation upon every question of that kind, and that is all there is of it. Now, a chartered railroad has a right, under the laws existing to-day, to lay their track upon the public

highways, with the consent of the commissioners of towns.

Mr. COOKE—Will the gentleman allow me to ask him a question? Why not prohibit special charters for railroads altogether in this section?

Mr. RATHBUN—It has been done already. Now, the object here is one that has been talked about, and gentlemen have acted on it over and over again. It is to get rid of special legislation upon all these different topics—to take it all away and require the Legislature to regulate by general laws the doing of all those things that are referred to in this section—by general laws for the purpose of regulating the granting divorces by the courts, not by the Legislature. This section provides, as I have stated, that the Legislature shall not, by any special act, authorize the laying of railroads in the streets of cities or villages; and the gentleman from Kings [Mr. Bergen] adds by way of amendment—which I think is very proper—"or on any public highway." Now, all this section does is simply to prohibit special legislation—that is all—and confine it all to general legislation. Anybody who is in favor of a general law will vote for the amendment and vote for the section as amended. Those who desire to retain special legislation upon these topics will vote the other way.

Mr. BERGEN—I would simply make one remark. It appears to be conceded that railroad tracks shall not be laid in the streets of cities or villages by special laws. I cannot conceive why the same principle should not operate in the country—why railroads should be allowed by special laws to be built upon the highways in the rural districts, which are in fact streets, and forbid upon streets in villages. The rule should operate in one case the same as in the other.

Mr. FERRY—It seems to me the amendment is entirely unnecessary. By looking at the section we find that the Legislature is prohibited from forming, or allowing any corporation to be formed except by a general law, with this limitation: "that municipal corporations may be." I suppose this restriction to which reference has been made by the gentleman, granting any individual associations or corporations the right to lay down a railroad track in the streets of any city or village, was intended to cover cases coming within the restriction where the Legislature may grant special acts for municipal purposes. There is no necessity for any special acts with regard to the country upon lands and highways.

Mr. COOKE—I would simply inquire of the gentleman from Cayuga [Mr. Rathbun] whether this provision was necessary at all, in view of the section referred to by the gentleman from Otsego [Mr. Ferry], for we have already adopted a section forbidding any special incorporation of railroads, and providing that every one shall be organized under a general law. I do not see why it is necessary to repeat here that a track shall not be laid on a highway by a special law. It seems to me to be done under general law, while no track can be laid down by a special law. Why repeat it?

Mr. DUGANNE—I understand from my neighbor that the section alluded to by the gentleman

from Otsego [Mr. Ferry] has been stricken out.

Mr. BERGEN—The section referred to by the gentleman from Otsego [Mr. Ferry] certainly will not prevent special laws being passed designating where railroads may lay their tracks. The section he refers to reads, "The Legislature may from time to time make general laws for the formation of corporations, and alter or repeal the same. All corporations hereafter to be created, except those for municipal purposes, shall be formed under such general law." The general law creating corporations or for the formation of corporations may not provide where tracks can be laid; so that even if this section were not stricken out it would not affect the case.

Mr. ALVORD—I would ask whether there is room for still further amendments.

The CHAIRMAN—No amendment is now in order.

Mr. ALVORD—I would suggest to the gentleman from Kings [Mr. Bergen] to get hold of this matter, so that the purpose will be well understood, as I understand it is intended to oppose the passage of special laws for the purpose of granting charters.

Mr. BERGEN—On public highways.

Mr. ALVORD—I propose to strike out the words, "the streets of any city or village" in the thirteenth and fourteenth lines, and insert "in any locality in the State."

Mr. BERGEN—I will agree to that.

Mr. SMITH—I do not think the provision referred to by the gentleman from Ulster [Mr. Cooke], covers the ground intended to be covered by this section. That provides for the organization of companies, and inhibits their organization by special acts. This refers to the privileges of companies after they are formed. There is a plain distinction between the two provisions. The difficulty which it is intended to provide for by this section, is not provided for by the other section referred to. I hope that gentlemen of the committee will remember that this provision is a part of the system which has been inaugurated by this Convention, for the purpose of relieving the Legislature from the consideration of private and local schemes. It ought to be borne in mind that legislation is becoming oppressive in this direction. A day or two since I called at one of our bookstores to know if the session laws were published, desiring to obtain them, and ascertained that they were not. It is now the first of September, and the session laws of last winter are not yet published. I was told that they would make two large volumes, and cost to every man who wishes to purchase them the sum of nine dollars. I was told also that two-thirds of the acts embraced in the two volumes, would be made up of local and private matters. We have been endeavoring to relieve the Legislature from the consideration of these private and local questions, and to permit that body to attend to general legislation, which is the legitimate business of the Legislature. It seems to me that this provision is designed for that purpose, and for that only—to prevent special legislation. It does not interfere with or re-

strict general legislation, but it simply provides that upon all these subjects enumerated general laws shall be made, and not special ones. The other provisions we have adopted are only part of the general system which is complemented by this section.

Mr. BERGEN—I accept the amendment of the gentleman from Onondaga [Mr. Alvord]. That covers the whole ground, as I understand it. My object is to prevent special legislation such as has occurred in my own neighborhood.

Mr. RUMSEY—There must be a misapprehension with regard to the provisions we have adopted in relation to the general incorporation of companies, and which also includes railroad companies. We have not voted to adopt the provision which is contained in the report now under consideration. What we have adopted is this; "Corporations may be formed under general laws and shall not be created, or their powers increased or diminished by special acts, except for municipal purposes. All laws passed pursuant to this section, which may be heretofore passed may be altered from time to time, or repealed." That is, all general laws under which corporations are so to be created, may be altered or repealed. Now, it is to be borne in mind that this section of the Constitution which we have adopted does not in its terms prevent the Legislature from modifying or extending the powers of corporations which have heretofore been chartered. And for aught I see, every charter of a railroad corporation heretofore passed may still be altered or amended, and its powers extended by special law, notwithstanding the constitutional provision we have adopted. In the report of the minority of this very Committee on the Powers and Duties of the Legislature, one of the objections urged against the report of the majority is that we ought not to adopt a provision which shall take away from the Legislature the power to alter or modify and extend the powers of corporations hereafter created. They object to it for the reason, amongst others, that the provision contained in this report from the majority of the Committee on the Powers and Duties of the Legislature expressly prohibits the Legislature from altering or extending the powers of corporations heretofore created. The last clause of the section in the majority report is, "That the Legislature shall not hereafter alter or amend the charters or extend the powers of any corporation (except for municipal purposes) by any special law." That was intended to place corporations heretofore created upon precisely the same grounds with corporations created under the amended Constitution, that their powers shall be extended only by, and in pursuance of, general laws. Now, I should have no hesitation in voting for the proposition of the gentleman from Kings [Mr. Bergen], if the Convention had adopted the section which the majority report proposes, prohibiting the Legislature from altering, amending or extending, except under general laws, the powers of any corporation heretofore created.

The question was put on the amendment of Mr. Bergen, and it was declared carried, on a division, by a vote of 43 to 37.

Mr. ALVORD—I move to amend by inserting

between the fifteenth and sixteenth lines these words: "releasing the right of the State to lands acquired by escheat or forfeiture or by the death of resident aliens." The reason I offer that is this: that in the history of this State we will look in vain in the proceedings of the Legislature, for a refusal at any time, upon application being made, for the passage of a law giving up the right to property that belonged to the State by reason of the death of aliens holding real estate. It has been invariably released since the commencement of government. It strikes me some general law should be made by the Legislature sending these cases to some court or tribunal, by means of which it would be adjudged when it is proper and right that the property should be released, without the necessity of going to the Legislature for that object. My experience in the past has been that this business, so far as the Legislature is concerned, has increased enormously, very much to the detriment of the public business of the Legislature. In 1866 sixty laws were passed; in 1867 thirty-seven laws were passed, and if my recollection is right, in 1864 over one hundred laws were passed on this subject. As our country increases in population, as immigration hitherward increases, so do these cases increase each and every year. And it has, as I have remarked, been uniformly the practice to release the escheated estate in these cases. It strikes me it would relieve the Legislature from a large amount of this detail and routine business by making it necessary that they should pass some general law relieving themselves from the examination of individual cases. I trust, therefore, this matter will be excluded from their consideration.

Mr. VAN CAMPEN—I ask if it would not be better to provide that aliens shall hold real estate.

Mr. ALVORD—I am, for one, opposed to that. I do not want at this time, so far as that matter is concerned, to bring up the discussion which must necessarily arise when that proposition shall come up. I prefer to let it rest until it shall come up hereafter legitimately for the purpose of adjudication by this Convention. But we can go this far, at least at present. I do not believe there will be any difficulty whatever in regard to this, matter in providing that there shall be no more special legislation, but that aliens whose property is forfeited can have that property released by a general law.

Mr. A. J. PARKER—I believe there is a general statute now authorizing the commissioners of the land office to release property under such circumstances.

Mr. ALVORD—The only general statute is that in regard to persons filing their intentions, and upon filing of those intentions the property is released.

Mr. A. J. PARKER—That is one.

Mr. ALVORD—There is no other general statute except that by which commissioners of the land office can release.

Mr. A. J. PARKER—The gentleman from Onondaga [Mr. Alvord] is mistaken.

Mr. ALVORD—I should like to have the gentleman from Albany point it out to me. There is no such statute now in force.

Mr. A. J. PARKER—I agree with the gentleman entirely that it ought to be devolved upon some board if there is no law devolving it upon the commissioners of the land office. I hope the Legislature will be released from these special applications. I think the amendment is a wise one. People refuse to avail themselves of the statute on the subject so far as it applies. Instead of proceeding under its provisions, where they are required to pay a small percentage, they choose to go to the Legislature, where they get what they wish for without paying any percentage at all.

Mr. VERPLANCK—I hope this amendment will not prevail. In the hurry with which we will transact business in this Convention hereafter, I am very fearful we shall fail to insert a provision adequate to the purpose. This right of escheat is a proper right in the State. When an alien dies, leaving no representatives, it is proper that the State should take his estate; but when they leave heirs, and sometimes when they have disposed of their property by will, it is necessary there should be some relief, and no board can be established so well calculated to pass upon questions of this kind as the Legislature. The State generally is interested in this question, and the Legislature is the proper body to pass upon these cases. I hope, before we take the right away as it now exists, some other and better method than the one proposed by the amendment will be suggested.

Mr. DALY—I agree with the gentleman from Erie [Mr. Verplanck], while at the same time I must agree with the gentleman from Onondaga [Mr. Alvord]. Bills of this description do occupy a large portion of the time of the Legislature, and it is exceedingly desirable that a general law should be passed to reach as many such cases as possible, and it is equally true that no general law can be passed to meet all such cases. I have had considerable experience in cases of this nature, and the practical effect will be to deprive parties of relief, which should be afforded to them, if we insert this stringent provision in the Constitution. I have had occasion to investigate this matter, and my impression is with that of the gentleman from Onondaga, that there is no general law now existing, except the one to which he refers, where a party filing his declaration of intention is entitled to hold real estate. I hope, therefore, that this amendment will not pass or any other amendment. Nor is that provision necessary, because if we omit to say anything on that subject, it will still be in the power of the Legislature to relieve itself by passing such a general law as will reach as many cases as it is possible to comprehend in the general words of a general act, and that is all the remedy, in my judgment, that the case affords.

Mr. COOKE—I concur with the gentleman from New York [Mr. Daly] that it is unwise to incorporate any such provision in the Constitution. It is impossible for us to anticipate the many cases in which legislative relief will be required hereafter in respect to this class of cases. We have got to leave something to the Legislature, which is the law-making power of the State. I do not know of any way in which we can so circumscribe

their duties as to compel them to pursue just such a line of policy as we shall think fit to-day to recommend to them. Allusion has been made to the great number of laws passed at the last session of the Legislature. It is charged that they did altogether too much work. It is obvious that there is, in this respect, a striking contrast between that Legislature and this Convention. I think it would be well if we had more of the members of that Legislature in this body, for certainly if they had been as much given to talk as this Convention is, they never would have found time to enact two thousand pages of laws at a single session.

Mr. MURPHY—I am decidedly in favor of some such provision as this, there should be a general law for the purpose of releasing these escheated lands. The policy of the State has always been to release such land in every case wherever any kith or kin might show themselves whether they were aliens or not. I do not know of any Legislature, by which a single case of relief has been refused. While on the other hand, as the gentleman from Onondaga [Mr. Alvord] has remarked, the Legislature has passed fifty or sixty of these acts in one session, taking a great deal of the time of members and swelling the statute book to an unreasonable size. But I do not like the idea which prevails in this body, and which is embodied in the section under consideration, of almost annulling the Legislature. It would seem as if the intention of the committee in reporting this article, was to do away with that body; that there is to be no discretion left to the people's representatives; that everything is to be done by some general law. I would make it mandatory upon the Legislature to pass general laws whenever such are practicable, but I would not forbid it to pass special laws absolutely. Let us look for a moment at some of these provisions. The first is that the Legislature shall pass no law authorizing the sale of property of minors or other persons under disability. There is a class of cases where it becomes actually necessary that there should be special legislative interposition, that is, where property is devised to after-born children, where the peculiar circumstances of the case must be recognized in the act itself, and require the special consideration of the Legislature, but from the general provision of this section such acts cannot be passed. Another part of this section prohibits any special legislation legalizing the invalid acts of public officers. Now, it very often happens that a town or county officer—a justice of the peace for instance—who is not familiar with the requirements of the statute, fails to qualify or file his security. He nevertheless goes on and performs his duties in good faith. It is discovered afterward he has not sworn in; and his acts are consequently invalid. The Legislature is applied to to pass an act to confirm his proceedings and make them valid.

Mr. FERRY—As these cases arise why not amend the general law to cover a particular case.

Mr. MURPHY—If you pass a general law to cover failures of justices of the peace to qualify, declaring the acts in such cases valid, the effect will be that no justice will deem it necessary to swear in. You only encourage them to disregard the positive requirements of the statute. It ap-

pears to me that this power should be reserved to the Legislature, that they may act upon particular cases as they may arise. I do not like the concluding provision of this section, which is in these words: "In any case in which provision has been made by existing general law." I do not believe that any general law can be passed which will not exclude some meritorious case. I know that the argument is that if you pass a general law and give the Legislature power to act in excepted cases those separate cases will multiply. Yet it is a greater evil, it appears to me, to prevent the Legislature entirely from acting in those cases. There must be some opening, some escape from these absolute restrictions and some elasticity in the general laws.

Mr. ALVORD—I find, on turning to the Constitutions of other States, Kansas, Nebraska, Wisconsin, California, Iowa, Nevada, Michigan, and other States and Territories that this rule prevails. "No distinction shall ever be made by law between resident aliens and citizens, in reference to the possession, enjoyment or descent of property, and the native-born citizens." It may be well enough for us to come to this point before we get through with our labors, but inasmuch as we have virtually, by all past acts of the Legislature of this State, come to the same conclusion, it certainly seems to me entirely competent on the part of this Convention to relieve the Legislature in the future from very many of the duties which have heretofore been incumbent upon them, and give that power by general law, so there shall be no necessity for the property of a resident alien deceased in any State being distributed among his legal heirs other than if he were a legal citizen. There have been laws passed over and over again by the Legislature of this State releasing the right of the State to property of aliens, and giving the right to sell real estate and distribute the proceeds among the representatives living in foreign countries, and in some instances permitting alien residents of foreign countries to come into this State and hold land that has come to him by the death of his ancestor. There has been nothing drawn in the way of a distinction of the property of an alien upon his death. The proposition I make will leave it to the Legislature to determine by general laws, whether there is any necessity, under the existing circumstances, of claiming the right to the property by an alien, or whether or not they will take the course which has been taken by younger States, and give to foreigners the same rights in regard to real estate and personal property which he may have in his possession that they give to native-born citizens.

The question was put on the amendment of Mr. Alvord, and it was declared carried.

The question recurred on the amendment of Mr. Morris.

Mr. E. BROOKS—If I supposed an amendment like this, would receive the votes of any large number of the members of this Convention, I should feel like occupying some little time in a solemn protest against its incorporation into the fundamental law of the State. I cannot believe it. The gentleman has alluded to what has transpired in France, as one of the most licentious

governments of the old world, in regard to the procurement of divorces, or in the absence of facilities for procuring divorces. The gentleman need not have crossed the ocean to have sought cases of wrong and outrage which are perpetrated every day. They exist in a great many of the States of this Union. They are a great stain upon the legislation of many of the States of this Union. And it is to the credit of the State of New York that there are so few facilities for the procurement of divorces. The very idea that a divorce can be procured upon seven years' absence, very likely arranged by the husband and wife, in order that they may absolve themselves from the solemn bonds of matrimony, seems to me a proposition so wrong and outrageous as not to be contemplated for a moment. The idea, also, that, for what is called cruel and inhuman treatment, for reasons which may be trumped up by the parties in interest, and that for such a cause as this the matrimonial bonds may be dissolved forever and forever, seems to me a dangerous proposition. An examination of the journals of the day, especially in large cities, will show something like this: "Divorces procured, and no fees asked from the parties until the act is finally accomplished." And if you look into the journals of Indiana and Illinois, particularly Illinois, you will find it a common custom for citizens of the State of New York, knowing how difficult it is to procure a divorce here, to employ some mercenary lawyer who will make arrangements by consent of the parties themselves, in order to absolve themselves from matrimony, and with the purpose of being married to some other parties. Within a few days past I heard of a case like this: there was a petition for divorce upon one day, granted by the court upon the following day, and the same day one of the parties entering into a marriage covenant, and all by the connivance of the two or three parties in interest. I cannot believe the State of New York, and I say it with all respect to the gentleman who has made this proposition, will ever incorporate in its Constitution such a provision as this. This, however, is not a new idea. For the last ten or fifteen years applications have been made to the Legislature of this State to pass laws granting divorce upon the very grounds which have been set forth in the amendment of the gentleman from Putnam. I am happy to say, as a citizen of this State, so far as my knowledge goes, that almost invariably these memorials, these resolutions, these appeals, often submitted, have been just as often thrown out of the Legislature with contempt, the great body of the Legislature being unwilling to grant divorces for any such causes. I have some ideas of my own upon this subject which may perhaps not conform with the views of legal gentlemen on this floor. But I hold that it is in violation of the Constitution of the United States for the Legislature of any of the States to do any such thing as is here proposed. My opinion is that inasmuch as "no State can pass a law impairing the obligation of contracts," and as marriage is the highest contract—one of the most solemn contracts known to human laws—it is not in the power of the State to incorporate any such provision as this in the State Constitution. I am unwilling to take

up the time of the committee in discussing the subject, and I do not believe any large number of this body will vote for it.

Mr. VERPLANCK—The object of the provision in the article under consideration is to prevent the Legislature from granting special divorces. That is the only object, and the amendment proposed by the gentleman from Putnam [Mr. Morris] is hardly in order. I do not propose to raise that question, neither do I propose to discuss the question presented by the amendment further than to say that I would leave absolute divorce upon the scriptural ground, and to protest in the name of christianity and humanity against the proposition of the gentleman from Putnam [Mr. Morris] that "the easier people can get divorces the more willing they will be to get married, and therefore better for society."

Mr. DAILY—I hope this amendment will not prevail. In my judgment it is much more serious than is indicated upon its face. It is drifting into legislation, and passing out of the realm of fundamental law; making those special provisions which it is incumbent upon the Legislature to do, as to the cause of divorces. As far as the general proposition is concerned, that it is desirable that divorces should be as easily attainable as possible, I have but one remark to make, that the concurring voice of all history in respect to one of the greatest, one of the most degenerate empires of the world—I refer to the Roman empire—has attributed that degeneracy in the first instance, to the facility with which divorces were obtained. Those countries which have attained the highest eminence in civilization, at least in modern times, are those in which divorces have been most difficult. But be that as it may, this is a matter to be left to laws established by the Legislature, and to the determination of the courts. I believe it is most unwise and injudicious for this body, hasty as its action must be in a great majority of cases, to pass an important and fundamental provision of this nature.

Mr. M. I. TOWNSEND—I shall vote against the amendment of the gentleman from Putnam [Mr. Morris], but not for the reason that I deem the proposition contained in the amendment to be unsound. I entirely differ with those gentlemen who believe that the allowing of divorces for any cause other than adultery tends to a demoralization of the community. I do not so believe. I do not believe that in those States of this Union where divorces are allowed for other causes, the practical working of the system has tended to the increase of immorality. I think it will be found, if you look at the States of this Union in which divorces are allowed for other cause than adultery, that they are not the most immoral States in this republic. I do not believe that the stringency of our divorce laws in this State has tended to increase public morality here. My observation has taught me that the influence of stringent divorce laws has worked precisely in the opposite direction, and that the State of New York to-day has very little to boast over other States in this Union in regard to the amount of morality that prevails within her borders. I speak of that morality which is sought to be guarded by keeping our laws upon this subject as they are. The gentle-

man from New York [Mr. Daly], who has just taken his seat, has referred to the case of ancient Rome. I will ask the gentleman, for a moment, to look at modern Rome, where divorces are practically unknown, and ask that gentleman if his information teaches him that the amount of morality prevalent in modern Rome is in excess of what prevailed even in ancient Rome?

Mr. DALY—As I have been in Rome, and know something of the social condition there; my judgment is, it is very much better.

Mr. M. I. TOWNSEND—It may be so; but in answer to that, I would ask gentlemen of this Convention to read the statistics and ascertain what proportion of the children of modern Rome are born in wedlock. It would be well to look through those nations in Europe that hold the marriage tie indissoluble, and see what amount of births in those countries in proportion to the whole number are within the pale of wedlock. It will be found that in that portion of Europe where divorces are practically unknown, the amount of births within the pale of wedlock bears no proportion to the amount of births in that part of Europe where divorces are easily obtained. I think, going through the world, it will be found that the granting of divorces for reasonable causes (not for unreasonable causes), does not tend to the demoralization of society. If there be any reason stronger than another why women should be made to participate in the actual making and modeling of laws, it grows out of this question of divorce. It is not to the credit of the male sex throughout the world that they have thrown every conceivable obstacle in the way of woman obtaining a divorce from a worthless, drunken, immoral, cruel and profligate husband. The very last winter, your Legislature relaxed the laws upon the subject of evidence, and allowed husband and wife to be witnesses for and against each other, but their wisdom refused to allow the wife to be a witness in a case where the investigation relates to the alleged adultery of one party or the other. Why is it? I will not say that it was to enable the profligate husband to carry home from the brothel the infamous diseases there contracted, and inflict them upon a wife, and close the mouth of that wife from testifying as to the manner in which she had been wronged by the man who had pledged his life and his all to her, but I will say it has precisely that effect. I will say further, without fear of the consequences of what I say, that the stringent divorce laws of the State of New York have done much to enable men to do wrong to those whom they had pledged their all, and to leave the women to a great degree without redress. I say this, believing that the amendment of the gentleman from Putnam is not necessary. The Legislature can remedy this evil just as well as we can, and I believe as a general thing the Convention should abstain from mere legislation. Believing this to be mere legislation I shall vote against the amendment, but I could not sit here, after listening to the views expressed, without giving my own impressions upon this subject. In the opinion of one individual, at least, the great stringency of the laws upon the subject of divorce in the State of New York instead of operating in aid

of morality have only operated in aid of immorality.

Mr. SEAVER—It is said that a good general never goes into action without first securing his line of retreat. I warn the gentleman from Putnam, lest he leave his line of retreat so open that it will demoralize his forces in such a manner he can never be able to get them into action. In this matter, as the gentlemen of the Convention may reject the proposition, I advise him to go into action burning the bridges behind him, and thus securing success.

Mr. MORRIS—It seems to me proper to make a few remarks in reply to the observations of the gentlemen opposing this amendment. The gentleman from Richmond [Mr. E. Brooks] mentions that I quoted France. I spoke of that country as an indication of what this country may become, provided our laws of marriage are such that divorce shall continue almost impossible. I merely spoke of that country because it is one familiar to us all; because many of us have visited it, and know something of its institutions, in order to exemplify my statement that, where divorces are impossible, the amount of crime is proportionately increased concerning the manner in which men and women live together. The gentleman from Erie [Mr. Verplanck] represents me as having said that the easier divorces are granted, the more willing people are to get married, and therefore the better for society. Within certain limits, I believe this to be true. But, sir, I ask the honorable gentlemen of this Convention, are not the frequent divorces granted in the Western States a thousand times better for society than the amount of infanticide which prevails to to such an alarming extent in our large cities in order to conceal the fruits of illicit intercourse? It is well known that there are men who prosper in New York by producing abortions for twenty-five dollars as a fee. The police records show such an immense amount of immorality that it is proper for us to consider this subject in a practical light, and it is for that object that I offered the amendment now pending. The views expressed by the honorable gentleman from Rensselaer [Mr. M. I. Townsend] coincide very nearly with my own. I thank him for his boldness in expressing his sentiments and convictions on this subject.

The question was put on the amendment of Mr. Morris, and it was declared lost.

Mr. SPENCER—I move to strike out in line nine the words "for locating and changing county seats." It is to be seen by looking at the amendment adopted to the article upon the powers of the supervisors, that it is embraced wholly within the provision of this amendment. The second subdivision of this section gives boards of supervisors exclusive jurisdiction in respect to the location, purchase, erection and care of buildings, and purchase of real estate for town and county purposes, embracing among other things the identical provision which is contained in this article.

The question was put on the amendment of Mr. Spencer, and it was declared carried.

Mr. BICKFORD—I move to strike out the twelfth, thirteenth and fourteenth lines. It seems to me that cases may arise in which special leg-

islation may be necessary, particularly in the city of New York or the county of Kings; perhaps in other cities also, cases may arise where special legislation may be necessary and proper to regulate the laying down of railroad tracks in the streets of cities. It seems to me almost impossible by general law to reach that class of cases. I therefore move to strike out those lines.

Mr. RATHBUN—That section has been considered, and the committee have spent a large amount of time in its discussion, and in the attempt to amend it. I believe it has withstood substantially any attempt in that direction. The design of the Convention, as I understood it from the beginning, has been to withdraw from the Legislature as much as possible all subjects of special legislation, where such legislation may be had by general law. Here is a subject about which there is no question that it may be done by general law.

Mr. BICKFORD—It has been attempted for several years to lay a railroad in Broadway. It is well known there has been a great variety of expedients tried to get that railroad in New York by general law.

Mr. RATHBUN—I know what has been attempted to be done in Broadway, and what has been attempted all over the State. There has been nothing brought before the Legislature of the State of New York that has been a source of so much alleged corruption, and so much alleged dishonesty, and that has caused so much dishonor to that body, and so much disgrace to the State as that same subject. It is for that reason that the committee believed it was right and proper and necessary to take away from the Legislature that power, and not only to take away from the Legislature the power to pass special acts, but I think the committee was inclined to go farther; that is, to give the corporation itself power over its own streets, and allow them to determine when and where and how railroads shall be located. However that may be, I ask gentlemen to lay a hand upon this power of special legislation, because it is right and proper it should be done, and they now have it within their grasp. I beg of them not to let it go by, and strike out that provision. In my judgment it should be retained.

Mr. BARNARD—The gentleman from Jefferson [Mr. Bickford], in proposing this amendment, said that it may be necessary for the Legislature to pass special laws applicable to the cities of New York and Brooklyn. Well, I presume that is the doctrine we have heard for years past. Those who live in those cities, who have an interest in the prosperity of those cities, who are compelled to pay taxes to support the burdens of those cities, are not so well qualified to judge of what they need as persons living at a distance, who probably have no acquaintance with those cities! With regard to the city of Brooklyn, there is this provision in the general railroad law: "No railroad shall pass along any of the streets of the city of Brooklyn without the consent of a majority of the owners of property along that street." And I have never known a railroad to be refused in getting such consent. Why do you want any special laws? We do not want any corporation sent into the city of Brooklyn to lay down

roads in our streets without the consent of our people. Does the gentlemen suppose we do not know what is for our own interest or for our good? And does he suppose that the people living in Jefferson county are better qualified to judge of what we need and what is for our good than we who reside in the city and who pay the taxes and who feel an interest in the prosperity of the city? We know what city railroads are, we know how much they are a benefit to our property, and we freely give our consent, and we want at least the privilege of saying so, because the streets in front of our dwellings are our own streets, paid for by our own money, our own private property, and yet we give them freely to the public. We have allowed railroads to spread all over our city, because we know it is for the good, the prosperity of our city to do it. The only check we have is to see that a proper corporation is instituted and proper officers made, and when that is done they get our consent; and, as I have said before, I have never known such consent to be refused. Why will you put it in the power of the people to go to the Legislature, and prowl around to get some private act passed to give parties the right to invade our premises, without our consent, and lay down rails that may be of positive injury to our property? I say, let this provision remain as it is. We are satisfied with the general railroad law. We are satisfied with any law applicable to the city of Brooklyn that is applicable to the city of Utica, Rochester, Buffalo, or any other city in the State. We do not want to be made an exception. We do not want one rule applied to us that you are unwilling to apply to yourselves in other parts of the State.

The question was put on the amendment of Mr. Bickford, and it was declared lost.

Mr. SPENCER—I move to strike out the seventh and eighth lines—the following words:

"Discontinuing public and private roads or highways."

My object in offering this amendment is to call the attention of the committee to the fact that there is a complete provision upon that subject made in the article to which I have before referred. There are three other subdivisions in that article upon the subject of highways, which it seems to me cover the whole ground which is embraced in the provision I have moved to strike out.

Mr. SHERMAN—I hope the lines referred to will not be stricken out. There was no provision in the section adopted on my motion for laying out or discontinuing highways, nor was any provision made to interfere with such working of them, as is now allowed by general laws. The only provision was in reference to the working of them in cases where general laws did not sufficiently provide. That is where it was intended to gravel the road or to put more work upon it. By general laws the board of supervisors were authorized to permit them to be done and provide for such doing. The section as it now stands will work in entire harmony with the proposition I proposed, and I trust it will be retained.

The question was put on the amendment of Mr. Spencer, and it was declared lost.

Mr. MURPHY—I move to strike out the

second subdivision of this section—the fourth and fifth lines. There are many cases where the circumstances are peculiar, and which cannot be met by a general law, especially in those cases of unborn children, which will require legislation. The State stands as guarding all such children through the Legislature, and it seems to me very improper to tie up the hands of the Legislature so they cannot act in these cases when they come up.

Mr. RUMSEY—I hope those lines will not be stricken out, and for this reason: The courts have now abundant power to order the disposition of the property of minor children or persons laboring under disability, conveying it in every case where the interests of those minors or disabled persons require the property to be sold. I imagine that this provision will not operate to prevent the sale of property which may depend upon the contingency of the birth of a child after the death of the testator. If the circumstances require that the property should be sold before the birth of the child the Legislature still have the power to do it, notwithstanding the provision of this section. If a child is born it has a vested right in that property, which ought not to be disturbed by any process of legislation, except under the order of the court; and it is to prevent things of that kind that this provision is inserted.

The question was put on the amendment of Mr. Murphy, and it was declared lost.

Mr. MURPHY—I move to strike out the tenth and eleventh lines on the fourteenth page.

The question was put on the amendment of Mr. Murphy, and, on a division, it was declared carried by a vote of 53 to 28.

Mr. ALVORD—I desire to offer an amendment to section 8, by striking out the words “the statute of limitations shall prevail in favor of the State the same as in favor of individuals,” and insert “no claim against the State shall be heard before said court unless it shall be preferred within three years after it shall have arisen.”

The CHAIRMAN—The Chair is of opinion that the committee must go back and proceed to take up the first section.

Mr. ALVORD—The ordinary rule has been, after the sections have been all gone through with in order, then amendments generally are in order, without reference to any particular section and without going through with the whole again.

The CHAIRMAN—The Chair holds that the sections which have been passed over must first be considered before amendments generally are in order.

Mr. COOKE—We have now passed through the article, section by section. Some of the sections have been passed for the reason that they were either incorporated in other articles or were referred to, or reported upon by, other committees. Such latter class of sections will therefore come up with the report of the other committees. We are now about to report this article to the Convention, and it is necessary for these sections to be in some way disposed of. I therefore move to strike out of this article all the sections that have been passed, for the reasons that I have stated.

Mr. RATHBUN—I hope not, sir; I hope they

will be referred, in some way, to the committees to whom they belong.

The CHAIRMAN—The Chair holds that this committee has the power to strike out or amend the sections of this article, or to report them to the Convention, but they cannot refer them to any other committee.

Mr. RATHBUN—I hope they will be reported to the Convention, and referred to the proper committee.

Mr. COOKE—I hope that will not be done. Some sections which were passed require a great deal of amending or the striking them out altogether. It would be hardly proper to report them to the Convention in the way they are now.

The SECRETARY proceeded to read the first section which had been passed, as follows:

SEC. —. The Legislature shall not appropriate, lend or give any of the money or property of the State to or for any charitable institution, purpose or object, except such as have been or shall be established, by and be owned and controlled solely by the State, except the following: the New York institution for the blind; the New York State institution for the blind; the society for the reformation of juvenile delinquents in New York; the New York institution for the deaf and dumb.

Mr. SHERMAN—I move that that section be reported to the Convention with the recommendation that it be referred to the same Committee of the Whole having charge of the report of the Committee on Charities.

The question was then put on the motion of Mr. Sherman, and it was declared carried.

The SECRETARY proceeded to read the next section which had been passed, as follows:

SEC. —. The Legislature shall not give, lend or appropriate any of the money of the State in any manner to or for the use of any person, body of persons, association or corporation, except such appropriations as are allowed by sections — of this article.

Mr. ALVORD—I move that section be reported to the Convention, with the recommendation that it be referred to the Committee of the Whole having in charge the report of the Committee on Finance.

The question was put on the motion of Mr. Alvord, and it was declared carried.

The SECRETARY proceeded to read the next section which had been passed, as follows:

SEC. —. The credit of the State shall not in any manner, nor for any purpose be given or lent to any person, body of persons, association or corporation, nor shall the State take or be interested in any stock of any company or corporation, except in payment of, or as security for, a debt previously due the State.

Mr. ALVORD—I make a like motion with regard to that section.

The question was put on the motion of Mr. Alvord, and it was declared carried.

The SECRETARY proceeded to read the next section, as follows:

SEC. —. The Legislature shall not sell, lease or otherwise dispose of any of the canals or salt springs of the State, but they shall remain the

property of the State and under its management forever. The aggregate quantity of land now connected with the salt springs shall not be diminished.

Mr. ALVORD—I move that that section, so far as it regards canals, be reported to the Convention with the recommendation that it be referred to the Committee of the Whole having in charge the report of the Committee on Finances and Canals. In regard to the salt springs, I move that that portion be referred to the Convention with the recommendation that it be referred to the standing Committee on Salt Springs.

The question was put on the motion of Mr. Alvord, and it was declared carried.

The SECRETARY proceeded to read the next section, which had been passed, as follows:

SEC. —. The Legislature shall provide by law for making all the common schools within this State free, and requiring all children in the State to be educated.

Mr. RATHBUN—I move that that section be reported to the Convention, with the recommendation that it be referred to the Committee on Education.

The question was put on the motion of Mr. Rathbun, and it was declared carried.

The SECRETARY proceeded to read the next section, which had been passed, as follows:

SEC. —. The Legislature shall not exempt any property from taxation except churches, burial-grounds, and that of free colleges and incorporated academies, and of all common or public schools organized pursuant to the laws of this State and subject to the supervision of the superintendent of public instruction.

Mr. RATHBUN—I make the same motion in regard to that—that it be referred to the Convention, with the recommendation that it be referred to the Committee of the Whole having under consideration the report of the Committee on Finances.

Mr. WEED—Do I understand that the Committee on Finances have reported on the subject of taxation?

Mr. CHURCH—They have not yet reported on that subject.

Mr. WEED—It seems to me it should be referred to the Committee on Finances.

Mr. RATHBUN—I will accept that suggestion, and modify my motion accordingly.

Mr. E. BROOKS—I move to amend, that the section now under consideration be referred to the Committee of the Whole having the subject of charities under consideration.

Mr. RATHBUN—That, sir, is objectionable in my judgment. It will be seen that that section refers to the subject of taxation merely, and has nothing to do with the question of charities. The only question is one of exemption, which will arise upon a discussion of the question. The whole subject of the section is taxation, and that properly belongs to the Committee on Finances. I hold that it will be entirely proper to refer it to that committee.

The question was put on the motion of Mr. E. Brooks, and it was declared lost.

The question was then put on the motion of Mr. Rathbun, and it was declared carried.

The SECRETARY proceeded to read the next section which had been passed, as follows:

SEC. —. No railroad shall hereafter be constructed or operated within any of the cities or incorporated villages of this State, until the consent of the local authorities of such city or village shall be first obtained for that purpose, and also the consent of the owners of at least one-half in value of the property on the line of the streets through or over which the same shall be constructed, be previously had and obtained for that purpose; or in case the consent of such property owners be not obtained, then with the consent of the general term of the supreme court of the district in which such road shall be located to be first obtained; such consent to be obtained and authenticated in such manner as the Legislature shall, by general law for that purpose, provide. The franchise allowing such railroad to be operated, shall be sold at public auction to the highest bidder, after three months' public notice, describing the route of such railroad, in the State paper, and in such newspapers in the city or village where said railroad shall be located as the Legislature shall direct. The whole avails of such sale shall belong to the city or village in which said railroad shall be located.

Mr. TILDEN—I move that we now take up that section.

Mr. CHESEBRO — As I understand the resolution which we passed before going into Committee of the Whole it provided that we should rise and report progress at half past eleven.

Mr. TILDEN—I move that the committee do now rise, report progress, and ask leave to sit again. This question of railroads in the cities is a very important one, and I see no reason why we should not act upon it.

The CHAIRMAN—The question is not debatable.

The question was put on the motion of Mr. Tilden, and it was declared lost.

Mr. STRATTON—I move that in regard to this section that the same report and the same recommendation be made, to refer it to the Committee on Cities and Villages.

Mr. TILDEN—I hope that that disposition will not be made. We have already disposed of a part of the question relating to railroads in cities. That is to say we have provided that no grants of that character shall be made by special act. Now, sir, in order to complete that provision it is—

The hour of half-past eleven having arrived, the PRESIDENT resumed the chair in Convention, when

The Convention again resolved itself into Committee of the Whole on the report of the Committee on Finances and the Committee on Canals, Mr. SHERMAN, of Oneida, in the chair.

The CHAIRMAN announced the pending question to be on the amendment of the gentleman from Ontario [Mr. Lapham], to substitute the sixth section of the article as reported by the Committee on Canals for the first section of the article reported by the Committee on Finances.

Mr. LAPHAM—It is not my purpose at this time to go extensively into the discussion of the questions which legitimately arise upon the motion I have now submitted to the consideration

of the committee. It will be seen that the substitution of section 6 of the article proposed by the Committee on Canals is the incipient step in the disposition which is hereafter to be made of the principal revenues of the State, so far as the policy inaugurated by the Committee on Canals differs from that inaugurated by the majority of the Committee on Finances. My first reason for asking to strike out the first section of the article of the majority report of the Committee on Finances is that the statement of liabilities and amounts that is therein contained has no legitimate place whatever in the Constitution. It contains a mixed recital of liabilities. Thus each State is bound to pay to individuals holding the obligations of the State and those which in certain contingencies the revenues of the canals may be called upon to refund to the treasury of the State. To the casual, incautious reader it presents a financial condition of the State which, though not false in fact, is calculated to mislead and deceive the public. So that if I were discussing simply the question of the adoption of the financial article alone, without reference to any other policy, I should advocate the striking out of this first section as unnecessary and improper by way of a constitutional provision, for it provides nothing and is a mere recital of certain debts which it is claimed the State is owing to individuals, and of certain liabilities which it is claimed that the canal revenues owe to the treasury of the State. But the motion which I have presented, Mr. Chairman, is to substitute the sixth section of the article proposed by the committee, of which I have the honor to be a member, in the place of the first section, with a view of bringing directly to the consideration of the committee the relative policies inaugurated by these two committees. It will be seen by the majority report of the Committee on Finances, and the reasons appended thereto by way of explanation, that it is the purpose and design of that committee, if they can secure the sanction of the Convention to its report, to prohibit absolutely, from this time forward until all the debts and liabilities enumerated in this report shall have been paid from the growing revenues of the canals, any improvement whatever upon the canals themselves. Now, sir, I believe that an attempt to return unqualifiedly in that respect to the policy which was inaugurated in 1846, and from which the people were compelled to depart within the next eight years, is a re-enactment of a system founded only in folly, a system which is blind to the best interests of the State and to the rights of the mass of her people. I am not here, Mr. Chairman, to discuss these questions as a champion of the canals; I entered upon the investigation of this question with no other motive, or desire, or interest than to do what I could, in an humble way, to promote the best interests of the State. I have joined in the conclusions to which the committee, of which I am a member, have arrived, in the full belief that the general recommendation contained in that report is one which in all its aspects more truly consults the interests of the people than the theory embraced in the proposition of the Committee on Finances. A brief glance, Mr. Chairman, at the history of the internal improve-

ments of this State, will not be out of place at this time. The first effort to create navigation by water across the State was by legislative action in the form of a corporation to the Northern and Western Inland Navigation company, on the 30th of March, 1792. That company was organized with two sets of stockholders, one to improve the navigation on the channels leading north from tide-water, and the other to improve navigation leading west from tide-water. The one was designed to aid in carrying commerce to and from the western lakes; the other was designed to aid in carrying commerce to and from Lake Champlain. These companies were organized with a capital of \$300,000 each. They were limited in their respective charges to twenty-five dollars per ton for freight on the northern route, and twenty dollars per ton for freight on the western route. Prior to the organization of those companies it had cost the people of this State one hundred dollars per ton to bring freight from Seneca river to tide-water. The object of these corporations was simply to improve the natural channels, not to create artificial channels; to go up the Mohawk river to Fort Stanwix, thence across to Wood creek; from that into Oneida lake, down to the outlet of that lake into the Oswego and Seneca rivers; and that was the extent to which it was designed to improve water navigation by reason of the incorporations thus formed. Those corporations organized. They made improvements to some extent. From 1792 to the year 1820 they had a corporate existence and the exercise of their functions; but in the month of October, 1820, they surrendered, or were required to surrender, their franchise to the State, and under an arrangement made with the respective stockholders, they were paid a sum which was satisfactory to them and to the people, and gave back to the people of the State these franchises which they had previously exercised. Now, sir, why was this done? It was done because in the mean time, through the sagacity of the great men of the State of that day, a system of artificial navigation by means of a great artificial channel from tide-water to Lake Erie, had been inaugurated, and partially put into successful operation. As early as the month of April, 1817, three years before the surrender of these franchises, the Legislature of the State had passed an act authorizing the construction of the Erie canal, the great Erie canal, as it was termed by the men of that day, although it was a very small affair in comparison with what it is as it now exists, and it is now much smaller than it really ought to be in order to secure the true interests of the people and the welfare and honor of the State. The construction of this canal, under the act of the 15th of April, 1817, was commenced on the 4th of July, 1817. Ground was broken on that day at the village of Rome; and it was a celebration of the 4th of July worthy to be remembered in all time, by reason of the connection of this important event with it, and with that anniversary. The great and ardent men who engaged in this enterprise at that early period entertained no doubt about the success of this great channel of commerce; but there were in the State in that

early period, men who did entertain doubts as serious and perhaps more serious, than any who are found at the present day. There were then, as there are now, sir, croakers who were warning the people against being led into an enormous debt and a depleted treasury; men who were constantly predicting the utter failure of Clinton and his associates in the effort which they were making to secure this great water-way through this State. I will read a single passage from the report of the State Engineer for the year 1863, giving a brief history by way of a documentary sketch of the canals of this State. As early as the 4th of July, 1817, when the first work was done by way of constructing the canal, the author of this report says:

"At this period the canal project was considered by many, an untried and ruinous experiment. Fearful were the lamentations in the legislative halls over the miseries of an over-taxed posterity. These evil forebodings, issuing from the capitol, were caught up and re-echoed by the timid and narrow-minded conductors of the public press. But, to the honor of those great statesmen whose prophetic visions enabled them to look beyond the hour of error, they beheld in the future the sunshine of prosperity."

Mr. Chairman, this work went on and was completed, so that the Erie canal was put in navigable order in the month of October, 1825; and those who are old enough to remember the events of that day, and those who have been curious enough to examine the historical records of the time, will find and remember that no event which has transpired in this State within the memory of any of us, has caused as much public joy, as many manifestations of hilarity, as were exhibited by the people of this State at that auspicious event. It was celebrated, sir, from one end of the State to the other, in all the cities and principal towns. At a celebration held at the Eagle tavern, in the then village of Buffalo, a sentiment was offered by one of those who were present—De Witt Clinton being among the number—to which I will call the attention of the committee, because it is a text which we may properly adopt by way of considering the practical question which is now before us. The sentiment was this:

"The State of New York—she has added another wonder to the world; her posterity, in the full fruition of its blessings, will guard with grateful recollections the rich bequest of their fathers."

By way of inducing the passage of the acts authorizing the construction of the Erie canal, the city of New York sent up to the Legislature a memorial in which the whole question of the benefits to result from the construction of that work were elaborately considered by the memorialists of that day. And I beg to call the attention of the committee, and especially the attention of the delegates who are here from that city, with its present grandeur and prosperity, to the ideas which were entertained at that time by the memorialists of New York with reference to the importance of this great work. They say:

"The whole line of the canal will exhibit boats loaded with flour, pork, beef, etc., and the other

valuable productions of our country; and, also, with merchandise from all parts of the world. Great manufacturing establishments will spring up; agriculture will establish its granaries, and commerce its warehouses, in all directions. Villages, towns and cities will line the banks of the canal and the shores of the Hudson from Erie to New York. The wilderness and the solitary place will become glad, and the desert will rejoice and blossom as the rose."

Now, sir, although this, to a certain extent, rested in the imagination of the person who drafted that petition, the picture has been more than realized in the practical results which have grown out of this great work. The main line of canal which was then the subject of consideration, and the various lateral canals which bring to it portions of its commence, have been constructed. They are now our property; neither the Committee on Finances, nor the Committee on the Powers and Duties of the Legislature, nor the Committee on Canals, propose to dispose of them or any portion of them. On the contrary, all three of these committees have united in recommending an absolute and unqualified prohibition against the disposition of any portion of them. The question then arises as a practical question, what shall be the policy of this State with regard to these great works? It is the real, the only practical question to be considered by the members of this Convention. Shall we do nothing more with the canals except simply to keep them in ordinary repair, or shall we allow this system, alongside of the other modes of transportation of passengers and of freight, to partake of the onward progress of the age in which we live? Suppose twenty years ago the Constitution had provided that there never should be any improvement on the boats of the Hudson river, what would be the state of things to-day? Suppose it had been provided that there should be no improvements in the navigation of the ocean, what would be the state of things to-day? To come nearer home to those who oppose those improvements, suppose the Constitution of the State of New York had provided twenty years ago that there should be no improvement in locomotives and cars upon railroads, what would have been the state of things to-day? And yet, sir, that is what this Committee on Finances practically propose to put into the Constitution of the State as to the canals. Railroads and their motive power may be improved, rivers and the palaces which navigate them may be improved, and you may sail in safety and splendor in parlors across the ocean, but you must let the canals alone. I do not understand the logic; I do not understand the force of the argument. It has no force. As stated in the report of the Committee on Canals, and the reasons annexed to it, the position is not boldly and openly taken that no such improvements shall be made. On the contrary, the position to be taken is this: that none of these improvements are necessary. Everything has been done upon the canals which prudence and economy, and safety, and the interests of the State require. Sir, I do not propose to go into the examination of the statistics and figures upon that subject at this time; I content myself with

what is stated in the report which I have had the honor to submit with reference to that branch of the subject under discussion, leaving to my associates upon the committee, who are familiar with the statistics, to continue the discussion, if such discussion shall become necessary. This, though, I may be allowed to say: It is a very extraordinary position to take in reference to this single class of public works, that they need no advancement for the next twenty years. It is a very doubtful proposition, I submit, to be made to the members of this committee, to say that it is a safe position, and that we may ground ourselves upon it, that there can be no necessity within the next twenty years for this or any improvement, and unless we can say there can be no such necessity then it is clear there is no safety or propriety in the prohibition. But I pass from the question of the necessity of the enlargement that is proposed by the committee, to a brief consideration of the position taken against the necessity for this improvement — that this system of navigation by canals has fulfilled its mission, that the canals have had their day, that in the onward progress of the age and in the march of improvement other modes of transportation have been adopted which entirely supersede and override the system of navigation by canals. I do not propose, Mr. Chairman, to go elaborately into the discussion of these questions, but very briefly to call the attention of the committee to some of the leading facts bearing upon it. In the first place, I have made an analysis of the tables embodied in the report, by which I find that so far from the canals having fulfilled their mission, and being unable to make any further progress, they have illustrated a most remarkable state of progress in the history of their navigation and tonnage. I admit, Mr. Chairman, that there has not been that uniform increase in the receipts from the tolls of the canals which would have been desirable and which the State was justly entitled to. The causes for that are enumerated in the report and may be adverted to during the discussion. But, sir, in the tonnage of the canals, which is the true basis by which to determine whether they are progressing or retrograding, we find the true solution of the question. Now, sir, from the year 1841 to 1845 the whole tonnage upon the canals of this State, was a little in excess of eight millions of tons—8,070, 228 tons. From 1845 to 1850, another period of five years this tonnage had increased from eight to thirteen million tons. From 1850 to 1855 it increased from thirteen million to over nineteen million, to nearly twenty million tons, 13,903,050 in 1850, 19,882,505 tons in 1855. From 1856 to 1860 the quantity was just about the same that it was in 1851 to 1855, 19,606,233 instead of 19,882,505 tons. Yet, sir, we find that the thirteen million tons, closing in the year 1850 producing sixteen million of revenue to the State; while the nineteen million tons from 1851 to 1855 produced only fifteen millions of revenue, and the nineteen millions from 1856 to 1860 produced only eleven millions of revenue. The reasons for this were stated in the report which has been made. Under the fear of competition from other sources, and by way of inimical legislation toward

the interest of the canals, and the holders of the securities which are to be paid from the revenues of the canals, the tolls were so reduced within those periods that nineteen and a half millions of tons carried by the canals from 1856 to 1860 produced \$5,000,000—less than thirteen million tons carried from 1846 to 1850. Now, sir, from 1846 to 1850 the policy which prevailed at the adoption of the present Constitution was carried out. The tolls were kept up; the tonnage and revenue were constantly increasing; and if there had not been any departure from that policy, the present debts which are charged upon the canals would have been paid, every dollar, and the canals would have had a fund in the treasury of the State as its creditors. From 1860 to 1865 the tonnage again increased from nineteen and a half million tons to twenty-five million tons. The average tonnage upon the canals for the five years previous to 1866, was 5,049,000 tons, and the average tonnage for the year 1866 was 5,775,000 tons, or an excess in the last year of 725,000 tons over the average of the five preceding years. And yet, sir, the position is taken here that these canals are not progressive; that they have fulfilled their mission; that their usefulness is at an end; that other modes of transportation are to be resorted to, and are to be chosen by way of consulting the true interests of the State. Let us look at this question in the light of these statistics as a practical question: whether it is better to abandon the facilities which are furnished by the canals for the transportation of produce, for the transportation upon railroads for all the tonnage passing through and from the State? The increase of tonnage for the past seven years upon the railroads and canals of the State has been nearly one hundred per cent. The charges which were made in gross upon the canals and railroads in the year 1860 were \$10,989,000. The charges which were made in 1866 were \$25,719,000. This includes the whole freight on railroads, the tolls and all charges of transportation upon the canals, making an excess in the year 1866 over that of 1860 of \$14,729,000. Where has this money gone—this excess which has been paid for the transportation of produce? The whole number of tons carried in 1860 was a little over six million; the whole number carried in 1866 was a little over ten million tons. Of that carried in 1860, four million were taken upon the canals, and two and eight-tenths millions upon railroads. Of that carried in 1866, five and seven-tenths millions were carried by the canals, and four and eight-tenths millions were carried by railroads. The charge per ton per mile, in the year 1866, upon the Erie railroad was 2 45-100 cents; upon the Central railroad it was 2 92-100 cents, and upon the Erie canal it was about 1 cent per mile. The result is, the canals in these years carried over a thousand million of tons for \$10,160,000, and for carrying eight hundred million tons, the railroads received over \$21,000,000. Now, it seems to me it needs no other statement than this, as a practical question, to demonstrate that if it is feasible, if it is practicable to continue to the people of this State, this system of navigation by the canals (the economy of which is so

great) that no wise man should think one moment of abandoning it. But it may be said, and such to some extent is the floating sentiment of the State, that this system of canal navigation is not susceptible of an honest and economical management, and for that reason should be abandoned. Its economy will not be questioned; its utility to the State and the people will not be questioned; but it is the source, the fountain of so much corruption, injustice and iniquity that it should not be followed further than is necessary. There are no such intrinsic difficulties as this in the management of the finances of the canals. There are no such difficulties as exist in the case of the management of the finances of the railroads. The great difficulty with the railroad system is that its hundreds of conductors are passing through its trains night and day, receiving money from the traveling public, and for that there is no other security or guarantee, except the individual integrity of the man. Now, with the canals, there is a system of checks and balances which utterly forbids the perpetration of any frauds and renders certain the receipt of all the revenues which the tonnage will command at the rate of tolls existing. The receipts are certain; it is the disbursement of the public revenues which alone constitutes the difficulty. That difficulty no more applies to the revenues of the canals than it does to any other revenues of the State. If we cannot have integrity in the disbursement of the moneys derived from the canals we cannot have integrity in the management of the financial affairs of the State in any respect whatever. But, sir, I do not propose at this time to go into any discussion of the reasons for the present demoralized state of the finances as relates to the canal and to the treasury of the State generally. Efforts have been made to purge this system of canal management from its iniquity and corruption and they have failed, Mr. Chairman, in my judgment. We can trace more directly than to any other one cause, the present demoralized condition of affairs to the attempt made several years since to impeach a canal commissioner, and the failure of that attempt, by a combination of politicians to screen him. His escape from punishment is the immunity under which the present state of things has grown up. It was regarded as a license for every species of demoralization, and for every departure from a sense of duty on the part of the officials of the State, and which has led to the state of things which now exists; a state of things in which it seems, from the disclosures, no partisanship is known, for the politicians of both parties are equally implicated; in which men by a common bond have united together to defraud the State and cheat the treasury. Now, sir, if I am to be told that this state of things cannot be purged, that safer and better men cannot be placed in power and employed in the service of the State, my answer would be—better abdicate the whole of its government. Sir, there is no such difficulty. We have officers now against whom there never has been a breath of suspicion. There is no practicable difficulty now any more than there was formerly in securing an honest

administration of the finances. In the report which has been presented from the committee of which I have the honor to be a member, is presented a plan upon which, by a faithful use of the finances, the revenues to be derived from the canals of the State may discharge the obligations which are now resting upon them by paying the principal and interest of the debts as they respectively fall due, by keeping down the interest of the general fund debt until the improvements are made, and then discharging the principal of that debt and refunding the advances and interest. I will not here enter into a discussion of the question as to the propriety of the charges upon the canals, further than to repeat what is stated in the report that they seem nowhere to have been credited with the two hundred thousand dollars per year that has been paid to the State since 1846. They are charged in the general fund debt with the proceeds of lands donated to the Erie canals by the patriotic men of the year 1817. They are charged with money which has been donated to the Erie and other railroads, and arbitrarily made debtors to the State to a very large amount. But I do not seek to open this question and to relieve the canal revenues from the necessity of ultimately paying and discharging the whole of these liabilities and reimbursing the people of the State for all that has been taken from them by way of taxation for the purpose of defraying the expenses of constructing and operating the canals. I desire to say that in the views I have entertained of this question I am not actuated by any hostility to the system of transportation by railroads. I am a friend to railroads; I have always advocated them. I have never entertained any feeling of hostility to them. But I cannot overlook the relative advantages to the people of this State, of the system of canal navigation as contrasted with railroad transportation. I cannot overlook the necessity of keeping up the competition which our canal system perpetuates between it and the system of railroad transportation. I cannot overlook what, to my mind, is the greatest fact of all, that there is in this system of canal navigation no monopoly to grind down the rights of the people. The canals are the people's highways, open to all, upon which every man may go with his cargo and transport it at his own expense, by paying the tolls which the State levies for the use of the channels. If a railroad could be constructed in such manner as that every man, who chooses to get his train of cars, could run them on the road, the canal would not be so exclusively the popular highway. But that is impracticable. The operation of a system by rail of necessity must be and always will be a system of monopoly, where a single set of proprietors command and control the whole transportation of the produce which is offered for them to take. It is for this reason that I would preserve to the people, if it can be done without taxation—and I believe it can be done—this great common facility for the transportation of their produce through the canal. And I would preserve to the people of this State this great facility for taking the produce which comes from other States and regions for transportation through the canal. To strike out of the business of this State at this day,

the entire capital and industry which is engaged in navigating the canals would be a more serious blow at the prosperity and industry of this State than by wiping out every railroad in existence upon its territory. There is no calculating the extent to which the people are interested in maintaining this system of navigation. Looking at it as a practical, as an industrial question, as an every day question, no man in his senses can for one moment deliberately take the position that there should be no further enlargement or improvement of this system of navigation. These briefly are the reasons why I am in favor of substituting the section I have proposed for the first section contained in the article of the Committee on Finances. I wish to inaugurate by this substitution a system which, while it does no injustice to the creditors of the State or to the State itself, at the same time does no injustice to the people or to the canals by putting up a bar to all improvement so far as they are concerned. As I stated, I have no interest in this question. I have entered into the investigation of this subject with ideas somewhat opposed, I am free to confess, to a further expenditure of money upon the canals. My opinions are the result of the investigations mainly into which I have entered since I have had the honor to be placed upon the committee having this subject in charge. Not living upon the line of the canal, but living upon the line of the great Central railroad, all the promptings of interest would favor my looking in another direction if I had any such desire. But, sir, I have no such desire. I came into the examination of this question with the simple purpose of looking at the welfare of the State and its people. I believe the welfare of the State and its people are bound up in preserving these great lines of communication thus open to all her citizens; that they are in no other way to keep up competition and keep down the monopoly which would otherwise exist by means of transportation only by railroads. Nor is there any partisanship involved in the examination and advocacy of this question. It is not a question which affects the republican organization, or the democratic organization in the State. It is a question entirely above and outside of party issues. One in which the people of all the States are interested, in which the great commercial city of which we are all proud, is as deeply interested now as it was in the year 1817, when her patriotic men penned the paragraph I have read from the memorial to the Legislature. It is a great question with the State of New York whether the route through Virginia shall be built to the harbor of the James river, and the city of Norfolk made one of the great competitors with the city of New York. It is another interesting question whether the northern route shall be perfected and thus a channel opened to commerce which will make the city of Portland a rival to the city of New York in commercial matters. All these grand results pictured by the memorialists of 1817 have been more than realized. All along the line of the Hudson, all along the line of the canals, the results predicted are found, and at its western terminus a great and growing city has sprung into existence. So that, looking at this question in the

broadest light in which we may examine it, the dictates of patriotism and a due regard to the welfare of the State, it seems to me, would prompt me, convinced as I am of the necessity and feasibility of this improvement, to advocate it, and sternly to resist incorporating into the Constitution any prohibition whatever against having improvements made from time to time as they may become necessary. Sir, the examination I have made on this subject among the documents and historical records of the early history of our canal system, has excited in my breast a feeling of State pride and interest in the maintenance of this great work, inaugurated, as it was, by the men of that day, whose names have come down to us as our most precious legacies. Among the earliest recollections in relation to public affairs which I cherish are two, one of which is when I stood with my schoolmates by the roadside and bowed our juvenile acknowledgements to the immortal Lafayette as he was passing on his last trip through the country; and the other is the pride with which I read the account of the passage of De Witt Clinton and his compeers on their first trip through the Erie canal from Buffalo to this city, and here mingling the waters of Lake Erie with those of the Hudson, as symbolical of that onward artificial flow which they trusted would be continued forever. I believe, sir, that the adoption of the substitute I have offered for the first section of the report of the Finance Committee, will be to the interests of the people of this State.

Mr. CHURCH—It is proper, Mr. Chairman, at this stage of the discussion, to consider the financial provisions of the report of the majority of the Finance Committee, in connection with the financial provisions of the report of the Canal Committee; and although the gentleman from Ontario [Mr. Lapham] has moved but a single section of the Canal Committee's report as a substitute for a single section of the report of the Finance Committee, I suppose the whole programme or project, so far as the financial arrangement in relation to the canals is concerned, is before the committee for discussion. With the permission of the Convention, I will occupy their time for a few minutes in endeavoring to show the contrast between the report of the Committee on Canals and the report of the Committee on Finances. I listened to the very eloquent speech of my esteemed friend from Ontario [Mr. Lapham] with great interest and gratification; but, sir, I must be permitted to say that it seems to me that the gentleman has not approached the real point for this Convention to decide. No one in this Convention appreciates more than I do the great benefits which have been conferred upon all the people of the State by its system of internal improvements. Having all my life lived upon the banks of the Erie canal, I hope I am not behind any gentleman in this Convention in a proper and full appreciation of the magnitude of that great work, or the benefits which it has conferred and is conferring upon the people of this State. But it seems to me that when the gentleman from Ontario [Mr. Lapham] glorifies the Erie canal and the public works of this State, and glorifies their inception and completion and the men who pro-

jected them and carried them forward, he has advanced but a little, he has advanced but a trifle, toward establishing in this Convention the wisdom and propriety of the proposition that we should at this time disregard the plighted faith and honor of the people of this State, disregard the obligations which we have solemnly made, and enter upon a new experiment of enlarging these canals. Sir, it is poor logic, to my mind, to say that in the early days of these public works there were "croakers" who doubted their success, and therefore to infer that those who oppose this wild scheme which is now reported by the Canal Committee are to be regarded as opponents of the public works—as enemies of the canals. It is not only unfair, but it is exceedingly unjust to endeavor to make that application. Sir, I assert, in general terms, that for the last twenty-five years, in my humble judgment, the men who have claimed to be the exclusive friends of the canals have been their worst enemies. They have piled debt upon debt upon these canals, they have increased the tolls and taxes upon the commerce that has passed over them, and thus have prevented that free and open navigation which we ought long ago to have secured. My friend said something in relation to the first section, which he moves to strike out, in the report of the Committee on Finances. I did not distinctly understand what he said, but, so far as I did understand him, he said that it was false and deceptive, and calculated to deceive. And, sir, I listened to have the gentleman tell this Convention in what respect it was false. It is easy to use these epithets in relation to this section, but it was the duty of the gentleman, in justice to himself, in justice to the Finance Committee who reported the section, in justice to this Convention, every member of which, I have no doubt, desire to decide fairly, to have shown this Convention wherein this article is calculated to deceive. It is not so; and I challenge the gentleman from Ontario [Mr. Lapham], and I challenge the Canal Committee, or any gentleman of this Convention to point to a single fact stated in that section which is not true.

Mr. LAPHAM—The gentleman from Orleans [Mr. Church] misunderstood me if he supposes I asserted that anything contained in the section was untrue, or false, in fact. I said no such thing. I said it was a combination of the liabilities of the State to its creditors and of the liabilities of canals to the State, which was calculated to deceive the casual reader as constituting really the whole indebtedness of the State.

Mr. CHURCH—I am willing to accept the disclaimer. I did not distinctly understand the gentleman, but as I understood him, I repeated what he said. But he now says it is "calculated to deceive the casual reader." We are in a Convention composed of intelligent and able men, capable of comprehending and understanding the English language. And here, sir, in the most simple form, in the first section of the article of the report of the Finance Committee, they have set forth the debts and liabilities of the State, and they have set forth those debts and liabilities truly in every possible respect; and I challenge the gentleman, as I said before, to deny it, or to

establish that any one of them is not true. The object of this section was simply to render intelligible to the great mass of the people what they have heretofore misunderstood. The amount of the liabilities of the State have not been known nor understood by the people, and the Committee on Finance thought it was no more than right and fair and honest to tell the people, and to state precisely how much the debt of the State was, and what it was for. The first section specifies the outstanding debts of the State and other liabilities, for the payment of which the canal revenues are pledged by the terms of the Constitution of 1846 and the amendment of 1854, as follows: The old canal debt of 1846, \$3,258,060; the general fund debt, \$5,642,622.22; and the debt under the amendment of 1854, \$10,807,000; the floating canal debt, \$1,700,000; advances for the canals by taxation with interest, \$18,007,289.68. If any gentleman will look at the Constitution of 1846, he will find every one of these debts provided for and the revenues of the canals pledged for their payment. I say it is proper and right and just that the people of the State should understand that fact.

Mr. LAPHAM—Is the eighteen millions contained in that statement either a debt or a liability of the State?

Mr. CHURCH—It is a liability for which the canal revenues are pledged.

Mr. LAPHAM—Yes; but is it a liability or debt of the State?

Mr. CHURCH—It is a liability.

Mr. LAPHAM—Of the State?

Mr. CHURCH—"The debts of the State or other liabilities," for the payment of which the canal revenues are pledged. I submit to any gentleman of this committee whether it is not strictly true—

Mr. LAPHAM—Is it a liability of the State? I wish the gentleman would answer.

Mr. CHURCH—It is a liability for which the canal revenues are pledged.

Mr. LAPHAM—A liability to whom?

Mr. CHURCH—It is a liability to return to the treasury of the State moneys which the people have paid out of that treasury by tax. It is precisely such a liability of the State as is specified in the section. It is a liability of the canal revenues to the other revenues of the State. From the earliest period of the history of the State it has been the policy of the State to keep the revenues of the canals separate from the other revenues. It has been the policy not to make profits out of the canals. I hold, myself, that the State ought not to make profits from the revenues of the canals. I should be opposed to carrying on our works of internal improvement for the mere purpose of profit. I should be opposed to taxing the commerce that passes over the canal for the purpose of putting it into the treasury of the State. It is for this reason, and on account of this policy, that the revenues have been kept separate from the other revenues of the State; and therefore it has been the practice of the State from the earliest period, when the people pay taxes for the canals, when they have advanced moneys for the canals and from other sources than their direct revenues, that those

taxes, and those moneys thus furnished should be returned and reimbursed from the revenues of the canals. The Constitution of 1846 declares in express terms that every dollar thus advanced shall be returned with interest at current rates as soon as it can be done consistently with the rights of creditors. The report of the Finance Committee provides that the outstanding creditors shall be first paid from the revenues, and then, in compliance with the Constitution of 1846, it provides that the revenues of the canals shall return to the treasury those moneys which the people have advanced by taxation. The Canal Committee state in their report, and it has been talked about in this Convention, and outside of this Convention, that the Finance Committee have imposed the payment of the bounty debt upon the canal revenues. Sir, in no proper and just sense can that be said. It is not true in the sense in which it is used. What we did provide for was that the canal revenues shall, in accordance with the Constitution of the State, return to the treasury the moneys which have been paid out of the treasury for the purpose of canals. Now, when we get these moneys into the treasury of the State, the question is, what shall we do with them? Shall we leave them to the tender mercies of the Legislature, to do as they please with them? The Finance Committee thought it would not be wise, and so we provided that when these moneys were returned to the treasury of the State, they should be applied to the outstanding debts of the State; and the only debt is the bounty debt.

Mr. VERPLANCK—I would like to ask the gentleman whether he does not propose to pay the entire bounty debt before giving to the canals any portion of the revenues that accrue; whether that is not the direct object of sections 5 and 6 of the Finance Committee's report?

Mr. CHURCH—The Finance Committee, in presenting their report, have complied with the pledges of the present Constitution in every respect. They have provided, first, for paying the outstanding debts of the State; second, they have provided for a return to the treasury of moneys which the people have advanced by taxation; and, third, they leave the revenues unincumbered, to be disposed of as the Legislature may direct. Now, Mr. Chairman, I invoke the attention of delegates to this Convention a few moments while I examine the report of the Committee on Canals, which they propose to substitute for the report of the Committee on Finances. I have the highest respect for every member of the Committee on Canals. I have no doubt that they presented this project in entire good faith. I have no doubt but what they believe that it is for the interests of the State, if not for its honor, to have the provisions of their article incorporated into the Constitution, instead of the provisions of the report of the Committee on Finances. But I desire to have every member of this Convention examine this report and decide for himself. I desire to call the attention of the committee to those epithets which the gentleman from Ontario has used, and determine to which report they ought to be applied. I undertake to say that the adoption of the report of the Canal

Committee, in its financial arrangement and in its proposed work on the canal, would be a disgrace to this Convention and a disgrace to the people of this State. Sir, I believe I know what I am saying, and I ask only that the members of this Convention will examine this subject for themselves, and, standing here to represent the sovereignty of the people of the State, say whether they will repudiate all its pledges, all the pledges of the people, and violate its agreement and disgrace the State by taking moneys pledged to a particular purpose, and use them for other objects. In the first place, let us look and see what it is that the Canal Committee propose to do with the canal—and it requires some little practical skill and some little ingenuity to understand what these gentlemen by these provisions actually mean. Sir, the Convention will bear in mind that this is not a project for completing the canals, it is not a project for completing a work already commenced according to a fixed and definite plan, but it is a project for commencing a new scheme of enlarging the canals. Now is the time when the Convention should carefully look at it to see whether, looking to the end of the scheme, they will commence it; because we all know when you commence the work, when you begin a project, there is no stopping place until its final consummation. Now is the time to determine, not whether we will complete a work already commenced, but whether we will commence a new work with the full knowledge that if we do commence it we must go through with it, whatever it may cost or whatever its consequences may be. Now, let us see what it is they propose to do. They propose to remove the wall-benches and furnish the necessary supplies of water upon the Erie canal, and to enlarge the bridges and aqueducts and approaches leading thereto. Let us stop here for one single moment. The aqueducts upon the Erie canal, and upon all the canals of this State, are the most expensive structures to be found upon the public works. They propose to enlarge these structures not only, but the approaches leading thereto. Pray tell me what is an approach to an aqueduct? I do not remember how many aqueducts there are upon the Erie canal, but I suppose the approaches to the aqueducts of the Erie canal would include the whole water-way between the aqueducts. But that is not all. They propose to enlarge the aqueducts and the approaches thereto, so far as may be necessary, upon the Erie, Oswego, and Cayuga and Seneca canals, and also construct one tier of large locks upon such canals, so that a boat 23 feet wide and 200 feet long can conveniently navigate the canal its entire length. May it not be claimed—and that is sufficient for my argument—may it not be claimed that under that authority you may enlarge your aqueducts and your locks and the entire water-way? If it should be found or claimed hereafter that you could not conveniently navigate a boat 23 feet wide and 200 feet long without having your water-way ten, twenty or thirty feet wider than it is now, would it not be claimed, and would it not be a claim well founded, that you had a right to enlarge the water-way to make it convenient for the passage of boats of the proposed size? It needs no prophetic vision to see that in the Legis-

lature of this State, in your canal board, and among your public officers, if it is claimed that these boats cannot navigate the present water-way of the canal—and I firmly believe they never can—that this authority is sufficient to enable the whole water-way of the canal to be enlarged at an expense that no man has estimated and no man can estimate. Again, they say the work shall be confined within the “present limits” of said canals. Now, to the “casual reader,” as my friend from Ontario [Mr. Lapham] would say, to the most unsophisticated in these canal matters, these words would be taken to mean only the actual water-way of the canal. What are the limits of the canals? It is not the water-way of the canal. Go over to your canal department, look at your maps in connection with the statute, and you will find that on each side of the water-way is a space of about thirty feet wide, called the blue line, and this blue line is the limit of the canals. Sir, if the work is to be confined within the limits of the canals, namely, within the blue line, some thirty feet wide on each side, you have authority to enlarge your canals sixty feet wider than they now are. Then, at the bottom of the article, they have said, “except as provided in this article,” the general width and depth of the canals shall remain as at present existing. Of course, if the authority for a general enlargement was conferred before that exception occurs in the article, the limitation which follows does not affect it, and the authority would exist to enter upon the gigantic work of making a full enlargement of the canal from one end to the other, notwithstanding the subsequent limitation that the general width and depth of the canal shall remain as at present, except as authorized by law. I believe that in the second edition of this report the committee have put in the word “now.” Is that so?

A DELEGATE—It is so.

Mr. CHURCH—So it reads “as now authorized by law,” but it does not limit or qualify the authority conferred by the preceding portions of this section. I now ask the committee whether they supposed that any such proposition was contemplated; and if not, whether the proposed article of the Canal Committee is not slightly deceptive? But they have limited the sum. That is the only limitation contained in this provision for doing this work; they have limited the sum to eight millions of dollars. After authorizing, as I claim, the enlargement of the aqueducts, and the other structures upon the canals, including the locks and the entire water-way, if it shall be found more convenient for the purpose of navigating these large boats, they then have kindly limited the amount of expenditure to eight millions of dollars for this work! Now, as a matter of practice in the history of this State, the limitation of the amount to be expended is of no sort of consequence. We all know it. If you commence a work to cost fifty millions, and limit it to five millions, when you get your five millions expended a pressure will come upon the legislative body that the money you have expended is lost unless you proceed to expend more. No matter though you put that limitation in the Constitution of the State, it will be swept away like

chaff, and every man of experience here knows it. And in this case they will expend the eight millions of dollars, and then, if your work is half completed, they will come back with the glory of the canals, the glory of De Witt Clinton, the glory of expending more money, in their mouths, and with the assertion, which would then be true, that the money already expended would be lost unless more money is granted, and you are then at the mercy of the spendthrifts. The limitation is clearly too low. If you will turn to the last report of the Auditor of the Canal Department you will find at page 46 the estimated cost of these locks on the Erie and Oswego canals alone as follows:

For wood locks,	\$12,619,040 15
Wood and stone,	13,049,946 65
Stone locks,	14,405,888 15

This estimate includes the enlargement of the locks, the work of removing the wall-benches, additional feeders to the reservoirs, and such work as was deemed necessary by the engineers in order to bring into use the enlarged capacity of the locks; but it does not provide at all for any enlargement of the water-way at any of the points on the canal, in any respect whatever. Everything that shall be found necessary in that direction to enlarge the water-way of the canals, which I say this section authorizes from one end of the canal to the other, is outside of any estimate that has been made for this work.

Mr. VERPLANCK—From what does the gentleman read?

Mr. CHURCH—I have in my hand the State Engineer's report for 1867—page 13. The Auditor says, “It will be doubtful whether the sum will be sufficient to pay the cost of the work should either plan be adopted;” and yet the Canal Committee, for the purpose of sugar-coating this proposition for the benefit of the Convention, have actually reduced one-third the estimate which was made by the engineers for the limited amount of work which they did estimate. Now, I appeal to men of experience, to every gentleman of this Convention, whether it is not a known and conceded fact that work always costs more than is provided in the estimate of engineers. This result is so general and uniform that I do not recollect a single exception upon the public works of the State. But all will see, I think, the reason why this limit is of no practical importance when we come to look at the other provisions of the section. This amount has been fixed at eight millions of dollars, for the purpose of inducing this Convention to swallow this gigantic scheme for the expenditure of money. In the testimony before the committee upon this subject, it is stated that it will cost a million of dollars to procure additional water, while the amount estimated is less than four hundred thousand dollars. The State Engineer himself gave testimony that it would cost, in his opinion, at least a million of dollars. If it does not cost two millions of dollars I shall be greatly mistaken, and it will be unlike any other work that has been done in the State. Besides that, the engineers testify that it will require, at all events, other work than that estimated upon the water-way at a good many points along the line of the canals. Mr. Van R. Richmond, who

was called before this committee, testified that the large-sized boat cannot navigate the present water-way on the canal without considerable work being done at various points, and he gives it as his opinion that the whole water-way should be enlarged, and there are new reservoirs to be built, and all the weighlocks must be rebuilt if you enter upon this scheme. Then, as to all the short levels. So much water will be let down by these large locks as to overflow the banks of the canal, and it will be necessary to make large ponds, large enough upon these short levels to hold the surplus water. All these improvements must be made at a large expenditure, and none of them are specified in the estimates. Yet these gentlemen undertake to limit the amount of this work to eight millions of dollars. But, sir, let us pass to other provisions of this scheme. We will turn to the financial part of the report, and the first thing that strikes me is in the second line of the seventh section—"After paying the expenses of collection and repairs of the canals of this State, there shall be set apart," etc. There is a word left out of that section which is most significant and important—the word "ordinary," before "repairs." In the present Constitution of the State, you will find that after paying the expenses of collection and superintendence, and ordinary repairs of the canals, it is provided that the surplus shall be used so and so. But these gentlemen propose to go into the revenues of the canals and take expenses of collection, and superintendence, and of all repairs, ordinary and extraordinary, before you can apply one single dollar to the payment even of the interest, much less the principal of any of the debts of the State.

Mr. LAPHAM—This is a misprint. The word "ordinary" should be there. It is not the intention of the committee to provide for anything except ordinary repairs in that article.

Mr. CHURCH—I am very glad to learn that some of the defects of this article are occasioned by accident and not by design. I thought this must have been occasioned by design, from the fact that we have had two editions of this report printed and put upon our tables.

Mr. LAPHAM—One report was printed and copied from the other.

Mr. CHURCH—I have been informed, although I will not vouch for its truth, that this subject was discussed by the Canal Committee, and that they deliberately omitted this word in their provision. But I accept the disclaimer of my friend from Ontario [Mr. Lapham], and am very glad to find even this improvement consented to. Now, how do they propose to dispose of the revenues of the canals? What is their financial arrangement? By the terms of the present Constitution we have \$1,700,000 appropriated, in the first place, and set apart to pay the old canal debt of 1846, which you will see in the first section of the article reported by the gentleman from Ontario [Mr. Lapham]. Three hundred and fifty thousand dollars to pay the interest upon the general fund debt, which makes \$2,000,000, or something over, to pay the old canal debt of 1846, and the interest on the gen-

eral fund debt. Then, by section 3 of the present Constitution, you are required, after complying with the first and second sections, to pay the interest on what is called the enlargement debt of \$10,800,000, and set apart enough as a sinking fund to pay the principal within eighteen years. These are the pledges of the present Constitution, and these pledges require over three millions of dollars a year for this year and the next year, and after that time over \$2,700,000 a year for the next five years, until the general fund debt is paid, and the whole of the revenues afterward, until the enlargement debt is paid. The provision reported by the Committee on Canals violates every one of the pledges of the present Constitution—every one of them. In the first place, after paying expenses of the collection, superintendence, etc., it provides for the payment of the interest upon the foregoing debts, and such of the principal only of the two canal debts falling due within the year. The Canal Committee seem to have found out that for the next four years only a comparatively small amount of these debts come due, and they therefore propose to take the sinking funds which the Constitution requires to be accumulated until the debts fall due and then applied to their payment, and appropriate them upon the canals, and when the debts mature to borrow money or tax the people to pay them. They in fact take nearly the whole of the sinking funds, except what is necessary to pay the interest on the debts, for several years, and appropriate them to other purposes than those required by the Constitution. They postpone the lien of the general fund debt in the revenues to that of the enlargement debt, and they even take nearly three millions of dollars now in the sinking funds, and "sacredly" pledged to the public creditors, and squander it upon the canals. Now, you have promised the creditor holding this old canal debt of 1846 that you would pay him from the revenues of the canal \$1,700,000 a year until that debt was provided for. You have promised the creditors of the general fund debt that next to the canal debt of 1846 they should have preference upon the revenues of the canals, and that there should be set apart \$1,500,000 until the debt was paid, and the balance of revenues should be applied as a sinking fund for the enlargement debt. I ask gentlemen of this Convention, I ask every honest man, what right we have to take this \$1,700,000 which we have promised to the public creditor, and the \$1,500,000 which we have promised to the public creditor, and expend them upon the canals or for other purposes. What right have we to change the priority of liens of these debts? And, above all, what excuse is there for filching the money already in the sinking fund, and appropriating it to other purposes? This money was borrowed under the present Constitution. It was obtained under the solemn pledge contained in that instrument, and the creditors have a right to demand of the people of the State that these pledges shall be faithfully carried out. Now, sir, I hold that these financial provisions violate the public faith, are a disgrace to the people of New York, and a disgrace to the credit of New York. Sir, upon what

is the credit of the State based? It does not depend, sir, upon your broad acres, upon your magnificent buildings, upon your public improvements; it depends solely and entirely (and that is all that the public creditor has to rely on) upon the honor of the people—upon the good faith of the people. It is no answer to this to say that New York is responsible for all that they have borrowed, and for this additional sum; it is no answer to say that. The question is whether you will abide by your agreement. There is no remedy against the State to compel a fulfillment of its obligations. Its honor and the honor of the people is all that the creditor has to rely on. When Mississippi repudiated its public debt that State was worth a thousand times more than the debt which she repudiated; and the same may be said of Pennsylvania, who faltered in her agreement for a time, of Indiana, Illinois, and other Western States. But the very moment that they faltered in living up to their agreements, their stocks went down from ten per cent above par, to more than eighty per cent below. If the State of New York, which has boasted of her credit time out of mind,—whose stock in every financial center of the old world as well as in this, have occupied a high position—if the State of New York by this Convention representing the people of the State will say, “we will deliberately set this precedent of violating all our agreements in relation to our financial provisions,” I tell you no man will ever have any confidence in the credit or honor of this State in financial matters again. They never can have; they never ought to have; because, if you can do this, you can, by and by, after a lapse of a few years, and when we have degenerated a little lower in financial honor, when we have become a little more demoralized by this financial mania which has spread over the country, say that we will further postpone these debts for ten or twenty years more, and by and by our successors may come up and say they have been postponed so long that we may now wipe them out entirely. No, sir; there is only one way for this State to maintain its honor, its character, its good faith; and that is to live up scrupulously—*scrupulously*—to every agreement with a public creditor. New York has heretofore always done that. The amendment of 1854 provided expressly that all the previous pledges of the Constitution should be complied with before they were entitled to one dollar of money, and this is the first time in the history of this State that a proposition has been made deliberately to violate our agreements with the public creditors. Never before, sir, in any Constitutional Convention, or before the people, or even before the Legislature, as corrupt as it is alleged to be, has there been a proposition made that the State of New York should violate its honor and its obligations to the public creditor. But these gentlemen come forward and do it, not only putting it in plain language in their provision, but they stand up here to defend it. And nothing more illustrates the degeneracy of the public mind, nothing more illustrates the depth of bankruptcy to which this country is floating, than this spectacle we see here of honorable and distinguished men standing up in this Convention to violate the

plighted faith and honor of the people of the State. I have, perhaps, said all that I ought to say on this question at this time. My object has been simply to show that the programme proposed, here by the Canal Committee is unacceptable and ought to be rejected. But if we are to enter upon this question of enlargement the people will never become a party to this fraud. If you incorporate these provisions in the Constitution, and ask the people to approve it, I know that they will spurn it with indignation and contempt. If it is so desirable as gentlemen claim it is, there is a way to do it and preserve our honor; but it is not the way which the Canal Committee have proposed. Why, sir, I greatly prefer the minority report of the gentleman from Erie [Mr. Hatch], if we are to enter upon this scheme. His proposition has the merit, at least, of being an honest proposition. He proposes to borrow the money which he claims is necessary, and proposes to pay that money, as I understand it (although I have not examined it carefully), after the pledges of the present Constitution are complied with. That, sir, may be done; but you must do one of two things if you will enter into this project—either borrow the money and pledge the revenues subject to the present liens and obligations upon them, or else you must borrow that money and pay the interest by taxation; or else, thirdly, you must tax the people to do the work. But it is more than doubtful, sir, whether the plan proposed by the Canal Committee will accomplish their object, even if it was right to adopt it. It would depend somewhat upon the amount of revenues which you are to derive from your canals. I have had an estimate made by the accountant in the canal department of the amount of moneys which the Canal Committee would get under their proposition, assuming that the annual revenues of the canals were \$2,418,000. I think, for the purpose of basing any financial action, the estimate is as large as it ought to be. It is possible that the revenues may be more than that; but I think no fair, safe, prudent man would proceed upon any financial arrangement, or proceed in the expenditure of a large amount of money based upon an estimate larger than that. This estimate of \$2,418,000 is the average net revenues for the last ten years. The Canal Committee, as I understand it, take the average net revenues for the past seven years, and then they add about \$100,000 to that. They call the revenues three millions of dollars. For the past seven years these revenues have been about \$2,900,000; but I believe that the revenues cannot be held up to the average of the past seven years, for if you take the seven years prior to the last seven years you will find that the average net revenues were only about half that sum, or \$1,500,000. But for the last ten years they have been \$2,418,000. We all know that three, at least, of the past seven years, have been exceptional years. We all know that the Erie canal has had thrown upon it an immense amount of business in consequence of the war. The war blockaded the Mississippi; it blockaded many of the roads leading from the West in a southerly direction, and some of those running in an easterly direction. It substantially blockaded, for a long period of time, the Baltimore

and Ohio railroad, and, for a considerable portion of the time, the Pennsylvania Central and other railroads further south; and it entirely blockaded the Mississippi. Consequently, large amounts of property were forced in this direction, and upon the Erie canal, which would not otherwise have come here. It is unsafe, I submit, to base a large expenditure of money upon the revenues in those exceptional years. It is not prudent nor careful management to do so. Assuming, then, that the average of the last ten years is a fair average of the net revenues of the canals, I have ascertained that, according to the section proposed by the Canal Committee, they will get, down to 1870, something over four millions of dollars: and then they get nothing, according to their own programme, from 1870 to 1880—not one dollar.

Mr. PROSSER—I inquire from what report the gentleman reads when he speaks of four millions?

Mr. CHURCH—Well, sir, I read from a statement made by the accountant in the auditor's department, by which he shows that on the first day of October, 1868, the Canal Committee can take from the sinking funds two millions and a half; on the first of October, 1869, they can take one million two hundred thousand; on the first of October, 1870, they can take one million one hundred and seventy thousand, which makes between four and five millions of dollars.

Mr. PROSSER—I would ask the gentleman to point out to the committee wherein the Committee on Canals, in providing for the interest and principal of the canal debt falling due and to be paid in 1878, and in providing for the interest on the general fund debt due in the mean time, have made any error, upon the supposition that there would be three millions net revenue in making the \$7,600,000, the first of January, 1870.

Mr. CHURCH—If the gentleman from Erie [Mr. Prosser] had listened to my remarks, he would have discovered how unnecessary it was for him to make this interruption; for I was proceeding upon the ground that the net revenues of the canals could only be safely calculated at \$2,418,000.

Mr. PROSSER—One other question, if the gentleman please. I will inquire whether, in the gentleman's judgment, the year 1866 was an exceptional year for the revenue, as were the other years?

Mr. CHURCH—The year 1866 was in some respects an exceptional year, for the reason that all kinds of produce ruled at very high prices; and when that is the case an extraordinary amount is sent forward. If the gentleman will take this present year, during which prices have also ruled high, and which year expires on the first of October next, in less than thirty days from this time, he will find that the net revenues will not be more than \$2,418,000. Yet we have had, during the whole year, as I have said, very high prices for all kinds of produce, which has induced the sending forward of a larger amount than usual. The point to which I desire to call the attention of the Convention is this: I do not say that it is impossible that three millions of dollars may be realized as the net revenues from the canals; I do say that it is unsafe to base a large

amount of expenditure upon that estimate. Now, if the Convention were going to undertake this work, the question is, whether they will run the risk, if they deem it so necessary and desirable, of being prevented in 1870 from going on with the work for ten years thereafter; and I submit to members of this Convention whether they would not run that risk by adopting this estimate of three millions a year, which is about \$100,000 more than the average of the last seven years. Now, sir, I have said all that I desire to say in relation to the propositions submitted by the Canal Committee, and I desire to repeat that I have spoken with great freedom and frankness, because I believe those provisions deserve it; I believe that this Convention, when they enter upon this scheme, should do it with their eyes open. At the same time, I desire to repeat, however, that I have no intention to reflect upon the honesty and good faith of the committee who have reported these provisions to the Convention. The gentleman from Ontario [Mr. Lapham] has told us that he has no interest in this question; that he has examined it for the first time in his life, and has become an enthusiastic convert to this policy of debt and expenditure. For my own part, sir, unlike that gentleman, I have had some experience in relation to these matters. I have heard the glories of the Erie canal talked about before, when money was desired to be expended. I have heard before how great and glorious were these works, and how great and glorious were the men who projected them and carried them forward. But I never did think, and I do not now think, that such considerations alone ought to insure the adoption of any specific measure of expenditure which may be proposed to a Constitutional Convention, or the Legislature, or the people. It is enough for us to say that we have these works upon our hands and must take care of them. For one, I am in favor of continuing them in the possession of the State. I would have the State nourish and cherish them, and protect them, and make them as useful as it is possible to make them; I would have these canals free from debt; I would have the commerce that passes over them free from taxes or tolls; and I would have free and open highways, not only to citizens of this State, but to the citizens of the whole country, as a line of transit from the West to the financial center of the country. The objection I have to the management of the canals, heretofore and now, is in relation to their financial management. I say it is a mistake, sir, a grave mistake, to load these canals down with debt. It always was a mistake. It can be demonstrated as plainly as mathematics can demonstrate that two and two make four, that if you had never borrowed one dollar to enlarge your canals, but had applied the revenues faithfully from year to year, your enlargement would have been completed before it was completed, and you would have been out of debt, and your commerce free from taxation. Sir, we have arrived at the point now when we can accomplish that object. Within a few short years this outstanding debt of the State can be paid. If the estimate of the Canal Committee is correct, it can be paid in eight years; if the estimate we have made is correct, it

can be paid in eleven years. These years, sir, will soon roll round; and in the mean time we can devise some way to facilitate navigation upon the canals. We can keep them in better repair; we can invite the commerce of the West to pass over them; and when that debt is paid, we can remove these tolls, which operate as a greater obstruction to the commerce of the country than your narrow locks. Yes, sir; and that is the precise issue between the Canal Committee and myself. I believe it is the policy of this State to pay off this outstanding debt, remove your tolls, and cheapen your transportation by about one-third. They believe it is better to run in debt, and attempt to increase the facilities on the canal itself, and keep up and perpetuate the tolls. That is the issue between us exactly; and upon that issue I am willing to go to the people of this State; I am willing to go to the men who use these canals, and navigate them; I am willing to go to the people of the West, who feel so much interest in them, and let them determine whether they prefer these large exactions upon the commerce passing over these canals, or whether they are willing to wait for a few short years, until this outstanding debt shall be paid, when we will be enabled to remove the tolls down to the standard of keeping them in repair. That is the issue between us exactly; and I desire the Convention to understand it, so that we may not have this question decided upon any false issue. And I say that every foot wider you make your locks, you fill them up two feet by your tolls and taxes on commerce. That is the effect of it; it has always been the effect of it. My friend from Ontario [Mr. Lapham] says we would have had much more revenues during certain years if the canal board had not reduced the tolls. Well, now, how does he prove that? How does any man prove that, if the tolls had not been reduced in those years, we should have had more revenues? I should like to have the gentleman from Ontario [Mr. Lapham], who evinces all the enthusiasm of a new convert on this question, tell us how he arrives at that conclusion. It does not follow, by any means. Those years, sir, were years of depression. And the gentleman has told us that the commerce upon the railroads, as well as upon the canals, fell off very largely. So it did. They were years of great competition for a small amount of business, on the canals and on the railroads. And, sir, I undertake to say (and I was an actor in the board which reduced the tolls during a part of those years), that but for the reduction of the tolls during those years, we would not have received as much money as we did. I undertake to say that it was the reduction of the tolls that saved us the commerce that we got. That was the ground on which it was placed after full investigation. The Legislature relieved the railroads from the imposition of tolls in 1851, which enabled them to compete more sharply with the canals; and the commerce was very light. Business was very much depressed; and it was necessary, in order to retain the business that we got, to reduce the tolls to some extent. It is not true, therefore, that the reduction of the tolls tended necessarily, or in fact, to reduce the revenues derived from the canals. But, sir, there

are one or two other subjects upon which, while I am up, perhaps I might as well make a few comments in relation to now, as at any other time. This proposed enlargement of the canal is not necessary, in my judgment, at this time. It is premature. I do not mean to say that it never will be necessary; I have taken no such ground in the report, nor anywhere. It is not necessary for me to take any such ground. But I do take the ground that at this time it is unnecessary. I aver that the canals are capable of carrying a very large amount more than they now do. I aver that the capacity of the canals has not been reached by more than one-half, to speak within bounds; and I do not believe there is a practical, disinterested man in the State, conversant with these subjects, who believes there is any necessity for this enlargement for the purpose of carrying all the produce or all the property which will be brought, or is being brought, to the canals for transport. There are various ways of ascertaining whether these canals are overtaxed with business. In the first place, if we go to the reports of our State officers who have charge of the canals, you will find that uniformly they have shown that the capacity of the canals has not been reached by one-half. Take the reports of our State Engineer, the officer who, of all others, is the most competent to make an estimate on this subject; and for the last five, six, seven years, in every one of the reports, this subject has been discussed, and in every one of them these officers have determined that the capacity of the canals has not been reached by at least one-half. The present State Engineer, not only in his report, but in his testimony before this very Canal Committee, has said that the capacity of the canal, assuming that the business will increase for the next few years as much as it has in the past, will not be reached before 1882.

MR. HATCH—Will the gentleman allow me to ask a question? I have not the report of the State Engineer here, but does not the gentleman know that the present State Engineer recommends the enlargement of the Erie canal?

MR. CHURCH—I have no doubt that the present State Engineer, and almost every other engineer in the State, will advocate the expenditure of any amount of money that this Convention might authorize; but, sir, I know on that subject that the present State Engineer—as anxious as engineers ordinarily are for the expenditure of money—regards it as unwise and unnecessary to provide for this enlargement in the Constitution. He has repeatedly told me so, and I have no doubt that is his opinion.

MR. HATCH—The propositions in his report, as sworn to, are entirely different.

MR. CHURCH—Undoubtedly. I am speaking only of the capacity of the canals.

MR. HATCH—We look at his reports for evidence of his opinions.

MR. CHURCH—The question to which the gentleman called my attention was not the question that I was discussing. Whether the State Engineer is in favor of this project or against it is a matter of no sort of importance to me. I only say, in answer to the gentleman from Erie [Mr. Hatch], that the State Engineer did state to me

on different occasions that he thought it unwise and unnecessary to adopt this measure in the Constitution.

Mr. HATCH—The gentleman, in his report, refers, as authority, to the present State Engineer, for very material statements that he makes in his reports.

Mr. CHURCH—Yes; and it does not follow from that that he may not have made some other statements in his report that I do not concur with.

Mr. HATCH—Privately.

Mr. CHURCH—Or publicly, either. I was talking about the capacity of the canals; and I say that our present State Engineer, in his reports, and in his evidence before the Canal Committee, has shown—not as a mere matter of opinion—but he has demonstrated that the capacity of the canals will not be reached, assuming that the business is to increase in the same ratio that it has increased, before 1882. That is fifteen years, I think, from this time.

Mr. HATCH—I will state that the present Engineer repudiates that statement which you have there. He states, in reply to a letter—which I have not got here—that Commissioner Bruce gave him a basis for a certain calculation, on which it should be made, and upon the strength of which he made the calculations for Commissioner Bruce; but he says, "If you want to know what my opinions are about the Erie canal I will refer you to my reports."

Mr. CHURCH—It is of his report I have spoken. Let me read a little from the evidence of Mr. Goodsell before the Canal Committee. He was called as their witness, to prove that the canal was overburdened and overtaxed with business. That was the object of introducing the testimony.

"Q. What is your opinion as to the capacity of the present locks to accommodate the business and the emergencies of trade? A. Well, sir, that is a somewhat difficult question to answer.

"Q. Give us the result of your observations, as a practical question. A. If trade could be distributed uniformly upon the canal, my judgment is that the present locks would answer for the next fifteen years. The maximum capacity of these locks would not be reached within about fifteen or twenty years; but you can't distribute the trade uniformly through the season; you can't force the spring and fall crops into the summer months, so that some months they are taxed to their full capacity, while others hardly at all.

"Q. Are there not seasons now when they are overtaxed? A. I have never known the double locks to be overtaxed, sir. There are instances where there are cases of a week of a large crowd of boats, but that is exceptional."

Now, that is what the State Engineer has told us—the most recent thing that he has said on the subject. But the Canal Committee were not satisfied with these answers. They examined him on a variety of other subjects; and, for the purpose, I suppose, of qualifying these answers in some way or other, they asked him this question:

"Q. I understood you to say that you had

known of no obstructions in the navigation of the canal, the passage of boats; is it not a fact that during the latter part of September, and the months of October and November, in a good season for western products, that the boats are hindered in passing by lack of room? A. Well, there are a variety of causes that go to make up these delays; there is a want of efficiency in the working of the locks—in the management of the lockages."

But they press him still further:

"Q. We ask it as a practical question? A. I don't know that there are any great delays that fall under my observation."

There is the evidence of your present State Engineer, called to make out the case of the Canal Committee. Take Mr. Van R. Richmond, than whom a more honest and capable public officer never was in the employ of this State, and he says in his report of 1861, which gentlemen can examine for themselves, and has demonstrated that this canal is capable of bringing to tide-water 5,220,000 tons of property, and it never has brought to tide-water three millions of tons. The largest amount was in 1862, when it fell short of three millions of tons. I desire to read what he says before the Canal Committee on that subject:

"A. In my annual report in 1861, to the Legislature, I made an estimate of the capacity, as near as I could, and it is as near as anything I can get at now, probably; it is equal to a tonnage, to furnish ample facilities for the delivery through the Erie canal to tide-water of 5,220,000 tons.

"Q. That is averaging through the year? A. Yes, sir; and the revenue with the same rate of tolls as charged in 1860, \$6,902,318; they each have reference to an equal distribution of business.

"Q. As to the business in fact which has been done, what has been your observation as to the capacity of the locks? A. There are times; of course, when it is more than others; I never recollect seeing the canal when I thought it overtaxed; I have seen it crowded, but when there has been a sufficient supply of water and business moving uniformly along, I do not even remember noticing the time when the canal was overtaxed; it might be so and I not have noticed it; I have not been on it for five or six years since 1862."

The year 1862 was the year when we had the largest amount of business, and when there was most inconvenience in passing locks. But the gentleman from Ontario [Mr. Lapham] has, and the Canal Committee in their report have told us that this mode of estimating the capacity of the canal was fallacious. They say that these estimates are based upon a uniform transit of property in boats over the canal, and that in point of fact it is not true that property passes uniformly over the canals—that business is crowded into a few weeks in the fall and a few weeks in the spring, and that in the summer months the canal is almost entirely deserted. Now, this is the argument of the Canal Committee, as I understand it. I say the argument is fallacious; the fact is not so, as I will show to this Convention by a few statistics which I have here. I have

obtained from the canal department the number of lockages in thirteen locks of the Erie canal in every month of the three years 1864, 1865 and 1866. Let us see whether it is true that the business of these canals is crowded into one or two of the fall months or the spring months. I will take 1864 in the first place. The number of lockages in May was 31,000 (I will not read the odd numbers); in June, 40,000; in July, 39,000; in August, 42,000; in September, when the crowding commenced, according to these gentlemen, 37,000; in October, when the crowding culminates, 37,000; in November, 30,000, and in December a very small number. The largest number of lockages was in the month of August, and in that month there were 5,000 more lockages than there were in the month of October, and when these gentlemen say the canal is most crowded. Now, let us take the next year, 1865. In May, 20,000; in June, 27,000; in July, 32,000; in August, 35,000; in September, 35,000; in October, 38,000, and in November, 33,000. In that year there was only 3,000 difference in the month of October and the month of August. I was surprised myself to some extent—although I knew this pretense was not true, as a matter of practical knowledge—but I was somewhat surprised to find how uniformly the business on the canals was done throughout the season. In 1866, last year, May, 25,000; June, 30,000; July, 39,000; August, 43,000, and in September, when the crowding commences, 41,000; October, when the crowding culminates, 40,000; November, 35,000. Again, you find in July and August a larger number of lockages than you had in September or October, but there is a remarkable uniformity all through the season. It is very easy to account for that uniformity, because, sir, the men who do business on these canals understand their business. They are perhaps as sharp, shrewd and keen business men as are engaged in any business in the world. And the men who deal in the products of the forest, such as lumber and other products, and in coal—which are articles when the greatest increase of business is to be found on the canals—do their business in July and August. They take the months when the canals are not needed for the produce of the country. The wheat and corn is carried in the fall and spring—corn in the spring and wheat in the fall, and very little in the summer months; but the other articles of property, such as lumber and coal, are carried mostly in the summer months; and in that manner you equalize the business of the canals and make it uniform. For that reason these estimates, which have been made on the basis of ascertaining how long it will take to pass a lock with a boat and how much that boat will carry, is a fair, legitimate way of ascertaining the capacity of the canals. There is another consideration about the capacity of the canals. We did the business in 1862, when the canals carried from 500,000 to 1,000,000 more tons than they ever carried before; and how many members of this Convention before we assembled here, ever heard that the canals were overtaxed and overburdened? How many members of this Convention ever heard of it during that period? Why, sir, if it

had been true that property was coming to your canals that could not be carried over them, you would have heard such a howling from the docks in Buffalo to the docks in New York, as would have waked up the entire people of the State to come to the rescue, to provide more money for the canals. We did that business; we did it easily and comfortably and conveniently; and, sir, according to, a fair calculation, it will be many years before you reach the amount of property that we carried over the canals in 1862.

Mr. LAPHAM—In 1862 the total tonnage was 5,598,785; in 1863 it was 5,557,692; and in 1866 it was 5,775,320, or greater than either of the foregoing years.

Mr. CHURCH—The gentleman is now taking the whole tonnage of the canals.

Mr. LAPHAM—Certainly, I am.

Mr. CHURCH—I take it, so far as tonnage is concerned, nobody has ever had the impudence to claim that there is any lack of capacity to carry all tonnage going westward; it is only the tonnage coming to tide-water that there has ever been any complaint about. I say that in 1862 they carried from five hundred thousand to a million more tons than in any other year to tide-water; that they carried more than they will reach, in my judgment, for many years.

Mr. ALVORD—In 1862 they carried 3,402,709; in 1866, 3,305,607.

Mr. CHURCH—That, I am sorry to say, is not the precise fact. Your three million takes in the property coming from the Erie canal and the Champlain canal.

Mr. ALVORD—Certainly.

Mr. CHURCH—Well, now, I take it that the locks on the Erie canal are not very much crowded from boats coming from the Champlain canal.

Mr. LAPHAM—If the gentleman will allow me, the tonnage on the canal in 1862 was 2,917,000 tons; in 1863, 2,647,000 tons; and in 1866, 2,523,000 tons.

Mr. CHURCH—Precisely what I said.

Mr. LAPHAM—What! a million difference?

Mr. CHURCH—I said five hundred thousand or a million, did I not? I have shown that these gentlemen have evidence before them from two of the State Engineers that these canals were not overtaxed in point of fact nor overburdened. Well, sir, they called another witness by the name of—

The hour of two o'clock having arrived, the PRESIDENT resumed the chair in Convention, and announced that, under the standing order, the Convention would take a recess until four o'clock.

AFTERNOON SESSION.

The Convention re-assembled at four o'clock, and again resolved itself into Committee of the Whole on the reports of the Committee on the Finances of the State and the Committee on Canals. Mr. SHERMAN, of Oneida, in the chair.

Mr. CHURCH—Mr. Chairman, when the committee rose I was referring to the testimony of a witness by the name of Breed, called by the Committee on Canals, to prove that the canal was overtaxed and burdened beyond its capacity. I suppose that there have been times when detentions have occurred upon the canal. I suppose

there will be times, whatever you do with the canals, when detentions will occur upon them. It is impossible, by any expenditure of money, to prevent these detentions at times at some of the locks and for some reasons. This witness, it seems, was called by the Committee as a kind of expert upon the subject. He had been a contractor upon canals, and had been a superintendent upon a canal, residing at Syracuse. He was inquired of by the chairman:

"Q. Will it necessarily arise in the future, providing the canals are unchanged, that there will be detentions at certain periods from the causes already mentioned? A. I do not suppose it is possible to construct a canal so there will be no detentions.

"Q. I mean detentions from the inability of the locks, as they now are, to take boats through as rapidly as commerce would require them to be locked through. A. I think detentions are unavoidable.

"Q. Do you think an enlarged lock of twenty-five by one hundred feet, a single tier of such locks, would add to the capacity of the canal in the way of lockage? A. My idea is, you will have the same detentions no matter how you construct it.

"Q. Aside from accidents, do you think there will be detentions? A. Perhaps not; nor would it with its present capacity; you would not, aside from accidents, have very much detentions if it was properly managed."

I desire gentlemen to look at this for a moment. The only point where the Canal Committee have pretended, by the evidence which they have brought before themselves that detentions have occurred, in order to show that we should enter upon the scheme of enlargement, is at the lock near Syracuse. There seems to be a lock there, in the vicinity of the weigh-lock—a lock which is so situated that you are obliged, in transporting boats toward tide-water, to lock against the current. These boats have to be drawn in against the current, and it is the point where the Oswego canal comes in. Now, I see by the testimony that all the burdens of the canals are confined to that one lock, and this witness was called because he was conversant with that particular lock. And it is probably the most difficult lock in the whole canal, a lock where there are more detentions and more difficulties on account of the mingling of these boats from the weigh-locks and boats navigating the Erie canal with boats coming in from the Oswego canal; and yet a practical witness whom they called tells us and he told the committee that detentions will occur upon any canal that you may make, and that if this lock and the canal were properly managed there would not be any detention even at this point—the place most difficult for navigation. But the committee did not seem to be entirely satisfied with this gentleman's evidence, so they pressed him a little further; and after they had examined him on other subjects, they returned to this question again and asked him:

"Then by referring to what was done, if we find that the number is 200 boats for the longest period, for one week in November, would it then

be your judgment that that was the utmost capacity of the canal to pass boats at Syracuse? A. At that particular season of the year you may know that the horses and men are worn, and half of the boats want men; the horses are unable to pass the boats in and out.

"Q. We must deal with things practically, as they have been and are to be. Now if we find at the Auditor's department that the number passing at the latter part of November is a given sum, may we then say that that is the practical capacity to pass boats at that point at that period of the year? A. Your idea is to get at the capacity of the canals?

"Q. The idea is, if the canal did at that period all that could be reasonably and fairly done? A. Here comes the question: it may take one man half an hour to pass a boat which could be passed in fifteen minutes; the capacity of the canal is one thing and the habits of men another.

"Q. Take it as it will be? A. You may lock boats from six to twelve an hour, with a good class of boatmen ready to move in whenever the lock is open, and you may increase the number to fifteen or twenty boats, but the next few hours you may have to get extra teams to fetch in the boats—it is all draw."

There is the testimony of this expert who has been brought here from Syracuse to show that at that particular lock there were such detentions that this Convention is authorized to expend large sums of money to enlarge the canals. He tells you that if the boats are properly managed you may lock through from six to twelve an hour. If it is twelve an hour it is one in five minutes, and if it is one in five minutes you can transfer three times the amount of property you ever did on the canal. He tells you this may be increased from fifteen to twenty boats. If you pass twenty boats it is one in three minutes, which will carry through more than four times the amount of property which has ever been transported over this canal. And this is at a point where the most difficulty is created, and it is a point to which these gentlemen have directed their evidence, in order to satisfy this Convention that this canal is overtaxed in point of capacity. Why, it does not require a man of any particular experience in navigating the canals of the State to know and understand that if there is a particular lock where, in consequence of the circumstances that surround it, there are crowds of boats occasionally coming in, producing detentions—it requires no experience, I say, in navigating canals, to understand that a very slight expense will remedy all these difficulties. And we are told by one of the gentlemen who was examined as a witness before this committee, and who was a practical man, that the trifling expense of putting a tow-path upon the berme side of the canal at this particular point, so that you would have a tow-path upon both sides, would increase the capacity of that lock from thirty to fifty per cent. The State Engineer has told you that if you will double the men at this lock, or if you will put a windlass upon it, you can increase its capacity very much. Now, I do not believe one word of this idea that we must go on with this enlarge-

ment because at that one particular lock at Syracuse there may be difficulties which do not exist on other portions of the canal. Why, I would rather put an additional lock there, and make it a treble instead of a double lock—something of that character, in order to increase the capacity at that particular point if it was necessary—than to enter upon this wild scheme of expending millions on millions to an extent that no man here can tell the end of, and which, in my judgment, will not end short of fifty or one hundred millions. No, sir, this talk about want of capacity is an afterthought. The enlargement of this canal has never until recently been put upon any such ground. It is put upon that ground now because they seem to have no other ground to put it upon. Why, the Auditor in his report in 1861 tells us, in speaking of the complaints of the Western people, that they do not complain of the Erie canal as wanting capacity to carry all and more than all the products brought to it; but that it did not carry produce cheap enough. That is the complaint; not that the capacity is not enough, but that we did not carry this property cheap enough. In 1867, in the very last report which he made to the Legislature, he tells us, in speaking of the competition of railroads, that we could well dispense with half of our tolls, if the canals had all the business they could do. "This," he said, "has not hitherto been the case, nor will it be for years to come." In 1864, two years after we had the heaviest and greatest amount of freight transported on the canal, he said in his report. "The difficulties of navigation now most encountered in the Erie canal are not the want of lockage capacity, but the obstructions of the bench walls, etc." Now, it seems to me that it is unnecessary to pursue this subject any farther. The idea of the want of capacity in the Erie canal, I pronounce to be utterly fallacious and without foundation. If you take the estimate of the engineers and officers in charge of the canals, they will show you that the capacity is equal to two or three times the amount that has ever been carried over it. If you take the opinion of men who have had the most experience on the canals, they will tell you that it is utterly idle to talk about the want of capacity. The Auditor of the Canal department has perhaps as much experience as any public officer in the State. It is in his office where all the details of this navigation are reported and registered, and those details come under his official supervision. He has told you in the strongest language that he is capable of writing, that it is all nonsense, it is utterly fallacious to talk about the want of capacity in the canals; that their capacity is sufficient to convey two or three times as much as has ever been carried over them. I do not intend to go minutely or elaborately into this question of cheapening transportation. It is said upon the other side that the enlargement of the canals will very much cheapen transportation. I have to say on that subject, as a general proposition, that it is at least problematical whether it will cheapen transportation. This canal and the locks were built to harmonize with each other. If we stop with the enlargement of the locks, if we increase the dimensions of the locks, and

increase the dimensions of the boats, you will undertake to navigate a water-way that was not calculated to be navigated by such boats, and every increase of the size of the boats upon a given water-way, limited as this canal is, increases the expenses of navigation. Every man who has given the least attention to the subject knows that when you increase the size of your boat in the canal you increase the friction of the water and increase the expenses of navigation, and decrease the speed with which you can navigate the canal. That has been the history of the canals of the State, and will be its history in the future. If you undertake to enlarge the dimensions of your locks, you must, as a matter of necessity, in my judgment, enlarge your water-way to correspond with such enlarged dimensions. Now, there is a point somewhere, where you cannot increase this capacity of your boats, and profitably navigate the present canals. There is no practical man in the State but who will tell you that there is a point where you cannot do that; and where that point is, precisely, I will not undertake to say. It may have been good policy in constructing this canal to have made the locks a foot or two wider than they now are; I will not say but it would have been good policy to have done that, but to increase the size of your boats to the extent now proposed, will increase the expense of navigation and transportation. It is enough that it is sufficiently uncertain to make it impossible for any man to say that by enlarging these locks simply, you will cheapen transportation. But, sir, as I have already stated, my idea about cheapening transportation is in a different way. I would pay your debts, your outstanding canal debts, I would take your tolls off and cheapen transportation in that manner. And, assuming now that the canals are of sufficient capacity to carry all the freight that comes to them, and will come to them hereafter, that is the sound policy to adopt, financially and in a business point of view. I believe it will be more satisfactory to the men who carry their freight over the canals. I believe they have more objection to these exactions in the way of tolls than they have to any want of capacity of the canals of the State; and that, as I stated, is the precise issue between these gentlemen and myself. I would cheapen transportation, but I would cheapen it by getting out of debt and removing the tolls. They would cheapen it by piling up the debts, continuing the tolls and carrying larger-sized boats. Now, we are told that unless we do this, there is great danger of a diversion of trade; that somebody is going to do something which will take away trade from the Erie canal. We have heard this story for a great many years of the danger of having our trade diverted. Well, what is it that is going to happen? What is this disaster that is to come upon us and take away our trade? Where is the power that is to come here and take away the Erie canal, and shut it up and block it up so we cannot carry property upon it? My friend from Ontario [Mr. Lapham] spoke of the danger of our losing trade, but he failed to tell us where the danger is. Imaginary dangers are not the kind of facts upon which a Constitutional Convention should act. I have no doubt that the

people of Buffalo have great fears that something may happen to take away the produce that comes down the lakes from the docks and elevators of Buffalo. I have no doubt they fear that, but I think their fears are without any foundation. They fear that the ship canal will be built around the falls which will take the property coming upon the lakes from Erie to Ontario, and thence to Oswego, and so on to New York without stopping at Buffalo and having the property transhipped. This is the real foundation for this scheme to enlarge your canals. It is because our Buffalo friends are fearful that something may happen by which property will go from their docks through a ship canal to Oswego and thence to New York, instead of coming through the Erie canal from Buffalo to Syracuse. I am not going to discuss the question whether we ought to build a ship canal or not. It is claimed on the one side that enlarged statesmanship demands the construction of a ship canal for the purpose of cheapening transportation from the West. On the other hand it is claimed we shall lose the tolls from Buffalo to Syracuse, and thereby we shall lose a large amount of revenues to the State, and therefore we ought to be opposed to it. Now, I am not going into the merits of that question at all, but in the first place, I desire to say on the subject that, in my judgment, it is not a certain proposition that a ship canal locking down from the Niagara several hundred feet would cheapen transportation to New York. I say it is not a certain proposition by any manner of means. You take property from the West now through the Welland canal from Lake Erie into Ontario, thence to Oswego, and so on down to New York. I do not understand that you can take property any more cheaply by that route than you can by Buffalo. I say it is at least doubtful whether the construction of a ship canal, if it answered all the purposes which its projectors claim for it (I do not say whether it will or not), will cheapen transportation to New York. If that is doubtful, if it should be constructed, then Buffalo would stand as the successful rival of all such projects for the transportation of property. In the next place, I desire to say, with reference to this subject of a ship canal, that nobody can ever build that canal without the consent of the people of this State. It is not in the power of any company on the face of the earth, or of any government, not even the general government, to build this canal without the consent of the people of this State. And if it is against our interest to have it built, we will stand like a wall of fire between our rights and anybody who attempts to come here and take away our revenues and our canals and build a rival route. If we do consent to it, then we must take the consequences without complaint. I think these fears in relation to a ship canal are idle. I do not believe anybody on the face of the earth will ever build a ship canal. I believe, if anybody ever undertakes to build it, before they get half the locks completed, they will get sick of it and abandon it. It is an immense expense to build that canal. If you undertake to build it for the purpose of transporting ships, you have an amount of expenditure that no man can calculate. But it

is enough to say that we can stand here perfectly secure, and no power can come here and build that route without our consent. Not even for military purposes can the general government take it without our consent. Now, I have said that I did not believe the enlargement of these canals was necessary. I have said that I did not believe the enlargement of the canals would be of any practical utility without an expenditure which certainly no man in this Convention has contemplated.

Mr. ALVORD—Where does the gentleman make this fall of seven hundred feet? The difference between tide-water at Buffalo and Oswego is three hundred and twenty-three feet.

Mr. CHURCH—It may be so. It does not at all affect the argument I make with reference to this ship canal. In the financial state in which we are placed, there are a thousand projects broached all over the country with reference to public improvements. They talk about going through the mountains of Virginia; they talk about building ship canals. I have seen a project about tunneling the Atlantic ocean, as being entirely feasible and exceedingly profitable. All these things are talked about. But that is no reason why the State of New York should become crazy and excited to enter into projects of this character. No reason whatever. None of these projects are even commenced; they are only talked about, and they will not be commenced for years—in my judgment, never—and we certainly will not allow them to be commenced in this State, unless we believe it to be for our interest to have them. But there are some other considerations that induce me to oppose this scheme of expenditure. If I believed that this enlargement of the canal was as necessary as my friends over the way seem to believe it is, if I believed the capacity of the canal was overtaxed and overburdened to the extent which they claim, and if I believed it would accomplish all that they claim it will accomplish, I would still be opposed to incorporating the provision into the organic law of the State. Nothing should be inserted except such provisions as are fundamental in their character. The financial condition of the country cannot be ignored. We must look the condition of the country in the face. We are overwhelmed with public debts and oppressed by taxation. Specie payments are suspended and we are laboring under the accumulated evils of an inflated, depreciated paper currency. Sooner or later we must return to a specie standard, and whether we do it gradually or rapidly we must experience great depression of business, financial revolution and widespread distress. Extravagance prevails in every department of the governments of the country and throughout the land. The general government collected from the people the last year between \$500,000,000 and \$600,000,000, and squandered large portions of it for every conceivable object. Our own Legislature have followed in the wake for several years, and increased the taxes of the people beyond all precedent. An army of public officers are appointed to collect the revenues, and another army to watch them, and another army of detectives surrounding the

courts to see that no one violates the law, until the whole country literally swarms with these officers engaged in forcing contributions and eating out the substance of the people. While the people are groaning under the weight of their burdens, a universal cry of official corruption is heard on every hand. The large exactions never reach the public coffers, but are embezzled by the officers of the government. Systems of taxation are fastened upon the people which distribute the burdens most unequally and oppressively. The revenue act lays its hand, it is said, upon sixteen hundred different articles. Everything we eat, drink, wear, or use, is taxed, and many of the articles two or three times over. The people of this State paid last year over sixty millions of this tax, and they paid over fifty millions of that most unequal and oppressive of all taxes, the tariff, which went to the government, and probably as much more to the manufacturers. When we come to our own State, we find that a large portion of the personal property of the State entirely escapes taxation—a property which yields the most profit, and is largely in the hands of men most able to pay taxes; and to cap the climax of outrage upon the masses of the people, a thousand millions of government securities in the hands of the citizens of this State, and protected by its laws, have been exempted from contributing anything toward the expense of protecting it—an act in my judgment (although it has the temporary sanction of the courts) as unconstitutional as it is arbitrary and unjust. The people of the State are now taxed eleven per cent upon the assessed value of all the property. I have been looking at the taxation of other countries, and I find none to compare with the taxation in this State. I have taken the pains to go to the public library and obtain a statement of the taxation in some of the principal countries in Europe and America. I find that in Great Britain and Ireland they pay a tax *per capita* of \$10.82, and that is the largest tax paid by any country in the civilized world except in the United States and in the State of New York. France pays \$9.49; Russia, \$3.57; Spain, \$7.16; Sweden and Norway, \$6.05; Prussia, \$5.35; Austria, \$6.54; Turkey, \$1.85. *New York pays a yearly tax of forty-five dollars per head on every man, woman and child in the State, an amount of taxation more than four times the amount levied upon the people of Great Britain and Ireland.*

Mr. ALVORD—Will the gentleman inform me how he makes that up?

Mr. CHURCH—Makes up what?

Mr. ALVORD—The forty-five dollars.

Mr. CHURCH—I can state to the gentleman how I make it up. It is stated in the report of the Finance Committee. The direct tax of the State is \$12,800,000; counties and towns, \$32,000,000; cities and villages, \$18,000,000; making \$62,000,000; the amount paid on the internal revenue tax in 1866 was \$62,181,398.80, and the amount collected by the tariff was \$56,000,000, making an aggregate annual taxation of \$180,981,398.80. The amount of this taxation is terrible upon the labor and industry of this State. There is paid by this State more, in fact, than I have placed in this statement. The State of New

York paid, in fact, and it has been obtained by the official returns from the revenue department, one-quarter of all the internal revenue tax. But I have placed it at one-fifth, and I assume that the people of the State pay the same proportion of the tariff as consumers. The direct taxes I get from the public documents. The Canal Committee seem to think from the manner in which they speak of taxation, that the people are delighted with paying taxes, and especially, that they would regard it as an impeachment of their patriotism, if money belonging to them was applied upon the bounty debt. Sir, I have seen no such patriotism as that. The people will pay all their debts, and by taxation, if necessary; but my friend from Ontario [Mr. Lap- ham] is mistaken, if he supposes that they do not desire these burdens to be reduced by every legitimate means in the power of this Convention. Go out through the valleys and over the hills of the State, and ask the farmers who, for the past two hot months, have been engaged in gathering the crops, the largest portion of which, not needed for their support, will go to pay their taxes, whether they will allow you to reduce them by the application of moneys which they have a right to, and an affirmative response will be given with a will. Go to the workshops, among the mechanics and workmen of the State, and ask them if they desire the burdens of taxation lightened, and they will point you to their destitute families, deprived of the luxuries and many of the necessities of life, by the withering curse of debt and taxation. What means the organizations and public meetings being formed and held all over the country by the workmen? They feel oppressed and discontented, and that feeling is largely traceable to the unequal burdens which you impose upon them. I confess I have sympathized with their efforts to obtain some relaxation from their labors, but I believe those only effectual which can be obtained by securing equality of taxation and economy in the administration of government. With the ballot in their hands they have the power, if properly used, to demand and secure these reforms. Now, Mr. Chairman, who but New York is capable of withstanding this financial tornado now passing over the land? Whose influence but that of the Empire State can check the evils that surround us? If we yield to the devastating tide, who can stand up and weather the storm? We are proud to call this the first State in the Union. I feel a pride in her influence with her sister States and with the general government, and I invoke the exercise of that influence on this occasion. Let us say that we will not enter upon new schemes of expenditure; that we will not incur new debts; that we will practice self-denial and reduce our burdens, retrench our expenses and pay our debts. Let us do this, and the people of the State will approve and applaud your action, and your influence will be felt throughout the land. If it turns out that we must enter upon this work, let us make it exceptional in its character, and not constitute it one of the fundamental rules of government. Sir, there are ways provided in the report of the Finance Committee by which you can accomplish

this object whenever it is necessary, without the slightest difficulty at all. It is not necessary now; the best men who favored this project admit it is not necessary now; but they say it will be in the course of a few years. Let us wait those few years, and when it becomes necessary, let us resort to our Constitution and do it according to that. There are two ways provided by which it can be done. In the first place, a law can be submitted to the people by which a debt can be created for this or any other purpose. If it is objectionable to create a tax for this purpose, the Constitution itself can be amended as easily as it was amended in 1854. There was no difficulty then, no excitement, no trouble; the people felt the importance and necessity of an enlargement of the canals. They went to work in a quiet, peaceable way, and in one short year they had the Constitution amended and a part of the work commenced. That can be done now. All I ask is that we shall not say as a fundamental rule, as an organic act, that we will commence new schemes of expenditure. Let us leave it to the people, according to the Constitution. If they order it, I certainly am willing it shall be done; I am entirely willing.

Mr. VERPLANCK—Does the gentleman mean to say that the amendment of 1854 was passed in a single year?

Mr. CHURCH—I say that within one year from the time it first passed the Legislature it was adopted.

Mr. VERPLANCK—I understand; the project was commenced in 1851, but was not submitted to the people until 1852.

Mr. CHURCH—The gentleman is entirely mistaken. That is all I have to say. The project of 1851 was the nine million bill. That bill was declared unconstitutional. In 1853 an amendment to the Constitution was commenced, and finished in 1854. It passed two Legislatures and received the approbation of the people. That was done so quietly and so easily that even the gentleman from Erie [Mr. Verplanck], who lives in Buffalo, does not seem to know how it was done. The same thing can be done again. When your canals come upon you and press for more capacity, or when the great and growing West, which gentlemen delight so much to talk about, come here with their produce, and desire a channel of communication, and we have not the means of carrying out their desire, it is the simplest thing in the world for us to authorize this work to go on according to the Constitution. We will not then say that we regard the expenditure of money and running in debt a proper constitutional rule, but that the circumstances are of such an exceptional character that we will adopt it in that particular instance. There is another thing I was going on to say that I am perfectly willing should be done. The gentleman complained because we ask for a return of these advances made by the people by taxation for the canals. They say that it is unreasonable we should ask that. The people have the unquestionable power to release them. I do not deny that; but they cannot take away the revenues from a public creditor without violating their honor and good faith. I am perfectly willing, so far as I am personally concerned, to sub-

mit as a separate proposition to the people of this State, the question whether they will release those advances to the canals, and allow, after the outstanding debts are paid, the revenues, to be appropriated in any manner that the Legislature and the people may desire. I am perfectly willing to have any such proposition as that adopted. I say further, that I will regard it as a good bargain on the part of the people to contribute these eighteen millions of dollars which are now owing them from the revenues of the canals, if they can in that way get rid of paying any more taxes for the purposes of canal improvements.

Mr. BECKWITH—I would like to ask the gentleman whether the canals have been credited with the two hundred thousand dollars which have been paid annually since 1846?

Mr. CHURCH—I am very glad my friend has called my attention to that, because I should have overlooked it. It seems to have been made a point in the speech of my friend from Ontario [Mr. Lapham], and also in the report of the Canal Committee. In 1846 the Constitutional Convention made a full and final settlement between the canals and the other revenues of the State. Previous to that time there had been advances made to the canals by taxation and otherwise. This settlement which was made in 1846 provided, according to the terms of the Constitution which the people ratified, that the canals should pay the general fund debt of the State, and that it should pay in addition two hundred thousand dollars a year to the support of the government. That was a part of the arrangement in the Constitution of 1846. Now, in relation to this two hundred thousand dollars a year, the fact is that it has not been paid for several years during the last twenty. I will not say exactly how many years, but I think it is as many as six or eight years that the two hundred thousand dollars have not been paid at all, because the revenues did not reach it, and it could not be paid. But this obligation has been entirely left out in the report of the Finance Committee. They thought it was better to yield up this claim on the canals entirely—this two hundred thousand dollars a year for the support of the government. I have now said, Mr. Chairman, all I desire to say on this question. I can say with my friend from Ontario [Mr. Lapham] that I have not the slightest interest in this question any more than every other citizen of the State. It will not put one penny in my pocket, nor take one penny out. It will not increase one personal aspiration or depress it. But my experience in the affairs of the State and the examination I have made of the subject induce me to believe (which I do with all the sincerity of which I am capable, although I may be greatly mistaken, as other gentlemen may be) that this scheme of enlarging the canals would be very unwise to incorporate into the Constitution at this time; that it is unnecessary, that it is, to say the least of it, of exceedingly doubtful utility, and that if hereafter it shall ever be deemed necessary it can be done with facility and with perfect ease, according to the terms of the Constitution which we shall make.

Mr. ALVORD—In entering upon the discussion of a matter of so grave importance as this, it

is due to myself to say that I have come to the conclusions, which I shall urge upon the attention of this committee, by a careful and close examination of the subjects under consideration. I believe, if I know myself, that the position which I happen to occupy territorially in the State, has nothing whatever to do with my position on this subject. I believe I have divested myself of local anxieties, if by possibility, in a case like this, I should clothe myself with any idea of locality, and that I have examined it according to my view of the best interests of the great people of the State of New York. I believe I am honest and sincere in making the declaration that if I were to-day a representative of the utmost extremity of Long Island, or of the far off St. Lawrence, wherever I might dwell, within the limits of this State of New York, with my present knowledge of this matter, with my present convictions in regard to it, I should take the same position, and occupy the same stand-point, and use the same arguments that I shall endeavor feebly to use upon this occasion. Sir, I deem it to be right; I deem it to be proper, notwithstanding the flings that have been made about the glory of the canals, notwithstanding it has been attempted here to bring this down to a narrow matter of dollars and cents—although I deem even that position upon the side I advocate is impregnable, I believe it right and proper to look beyond this simple proposition of immediate cost and revenue into the greater field which can be entered upon by those who shall examine this subject. Sir, we are one of the States of this Union, one for the purpose of local government, one for the purpose of bringing more at home to each and every one of us that which is necessary to our local interests, and one, also, of the great people, we are a small portion of the great people of these United States of America, and as our prosperity shall go up in the future, so will the prosperity of all those who surround us. As we shall throw blocks in the way of the prosperity of our neighbors of the other States, so shall we injure and mar our prospects in the future. We should not, therefore, look at this question in the light alone of the people of the State of New York, but with the knowledge and acceptance of our responsibility as a part of the people of the United States of America. Sir, looking at it in this light, and examining it from this stand-point, what position do we occupy? Where are we? Where! In the gateway of commerce from the West of this great and growing nation to this eastern shore, to the Atlantic Ocean, over which shall be sent the products of the country in order to feed the people of other countries, and be enriched by the return. We are in a position necessarily, naturally, and geographically, of the commercial State of this union. There is given to the bleak hills of New England the manufacturing powers of the country; there is given to our friends, the people of the South, the growing of those articles which their climate and soil make most genial to them; there is given to the great West the growing of the cereals, wheat, corn, oats, and the manufacture of flour, the raising of cattle and hogs, which support men not only within the limits of their own locality,

but minister to our necessities, and feed the people of the earth. When this work of internal improvement was commenced, the far-seeing and sagacious eyes of those who first witnessed this great depression of the Alleghanies in our State, stretching from the lakes to the Atlantic, looked not alone at the then present, but off into the far distant future, and to the growing of those great nations that lie behind us even now in our own history. They looked also at the improvement and benefit of the people of this State. They had, in times gone by, delved and toiled upon the edge of the wilderness, breaking a little in here and a little in there, but they had done that with toil, and sweat, and trouble, and with perils; but they had made very little advance in the direction of the increase of the population of our own State of New York. I have sat on my father's knee and listened to his recital of the toil which surrounded the pioneer of the West, when, even in his day and generation, seated far upon the outskirts of civilization, in the wilderness of the country, it was necessary for him, after having toiled through the entire winter of the year in producing the article of manufacture that he undertook to produce, to take the early spring-tide, and, with the first flood of the released waters, embark in his boat upon them, natural as they were, and find his tortuous and winding way to the confines of Pennsylvania and Ohio, there trafficking and bartering the articles of his manufacture, and ascending the Alleghanies, and there exchanging them for the produce of that locality; toiling again, across the mountains to the city of Philadelphia, for the purpose of turning his articles of barter into money, and taking that money and going to the general mart of commerce of this country, then as now, New York, purchasing his goods, and bringing them up the Hudson, and taking his slow and winding way up the Mohawk, through Wood creek down Oneida lake and river, up the Seneca, and up the Onondaga outlet and lake—bringing him to the point from whence he originally started, having given four months of the entire year to the traverse which had then to be made for the purpose of bringing the necessities of life to his family and his people. Sir, those pioneers, who thus went early into the western portion of this State, as from time to time they came to some hill-top on the way, and looked over and marked the vast expanse of comparatively level country, reaching from the great lakes of the West down to the tidal waters of the Hudson; and they saw that, so far as it regarded those great waters—embraced thus in the large lakes lying west of the borders of our States, the Almighty had seen fit to send them down a precipice, in order to have them go upon a lower level, and with the rapids of the St. Lawrence, pass to the Atlantic Ocean—they might be moved calmly, gently, upon this wide, extended plain, gradually, but slowly, falling toward the waters of the Hudson, and thus held in by this great and gigantic precipice of Niagara Falls, they might be, by the kindly hand of man, carefully brought down, in artificial channels upon whose bosom might float in safety the productions of the country vastly increased by such improvements, down to this mart of commerce here upon

the sea-board, and to the benefit and advantage both of the producer of the interior and the consumer at the sea-board. Sir, in 1808,—as long ago as that—an able and eloquent man, from my native county, the county of Onondaga, elected to the position which he occupied upon the floor of this hall by the conjoined vote of all those who were politically opposed to him as well as those who were with him, first stood up here and announced the fact that this line of communication could be carried across to the broad lakes, to the great benefit and advantage of the people. And upon a petition, going from my county, with my father among others on its rolls, upon that petition for the first time in the halls of legislation of this State, was ventured the hope and the faith that the people of the great State of New York would undertake this gigantic enterprise. From time to time, sir, there were gathered together men who were far seeing and sagacious in this matter, who were determined in reference to it; and we have the honored representative of one of the great names of the past of our State here among us to-day. That man at that time stood forward in the same line, and in the same path of policy, which had before that time signalized the acts of his great ancestor, for it was in 1792, under the guidance of George Clinton, and through a message by him, first introduced to the Legislature of this State that anything was done in the way of internal improvement within the limits of the State of New York. But in 1808, in 1811, and in 1814, De Witt Clinton pressed forward this movement thus began in 1808; and it finally culminated in the adoption of the policy of internal navigation in this State in 1817. What did our people then do, as compared with what the people of the State of New York have done since—as compared with what we, the committee, ask them to do now—as compared with the enormous debt which has been thrown into our faces again and again here. They did a work that was gigantic, while this is pigmy. Without resources of any kind, they barely kept soul and body together—they having an undeveloped State. Why, sir, from the place where we now stand it was but a short distance to the confines of civilization; you could go but little way west and not be on the belt of unbroken wilderness that surrounded then the city of Albany; they buckled on their armor and went to work and nourished and carried through that great triumphant policy, which is, notwithstanding the words of the gentleman from Orleans [Mr. Church], the pride, the boast and the glory of the Empire State of New York. Sir, in discussing this question in the reports which we have had on the part of the Committee on Finance, the position is taken that, so far as it regards the work to be done by the canals, they have ceased to be useful; that they are one of the things of the past; and, in order to demonstrate that, they turn broadly, in their opinion, to the fact that the tonnage which has been heretofore carried upon the canals of this State, from the products of the State, is constantly, each and every year, diminishing.

Mr. CHURCH—Will the gentleman allow me to correct him? The Committee on Finance have not taken any such position.

Mr. ALVORD—I speak of the gentleman's committee, both the minority report and the other. I hold, Mr. Chairman, and I hope that I shall be able to demonstrate the fact before I get through, that whether intended or not, whether it shall be openly avowed or not, upon this floor before this controversy shall have been ended, that this is in reality and in truth a contest between the people upon the one side, and monopolies upon the other; and that the tendency is in the direction of compelling the people of this great and proud State of New York to give up the last of its sovereignty into the hands of corporations who have become its tyrants by the enactment of laws ostensibly for the benefit of the people, and that have been diverted to the injury of the great mass of the people of the State. I was about to say, sir, when I was interrupted (and in order that I may keep right with the gentleman from Orleans [Mr. Church] I will speak more particularly in reference to the minority report made by the gentleman from Monroe [Mr. Clarke,]) that, if I understand aright, the gentleman from Monroe [Mr. Clarke] and the gentleman from Orleans [Mr. Church], they both came to the same financial conclusion, that, although they may undertake to travel by different roads, they come to the same final result. Now, sir, at the time of the initiation of the Erie and the Champlain canals, they went with but little exception from one extreme to the other through an unbroken wilderness. Thousands upon thousands and tens of thousands of acres of the lands which now lie contiguous to the Erie canal, stretching from just beyond Schenectady almost to Buffalo, were a primeval forest. The same was true, to a large extent though not in the same degree, upon the line of the Champlain canal. I believe, sir, honestly and firmly, and I do not believe that any man who hears me will doubt me, that very many of those acres would have remained to-day uncultivated; that the trees would have stood up as straight as they did in days of yore, if it had not been for these works of internal improvement that pierced them through and brought the results and products of the forest thus to the light of civilization in the shape of material for use and transportation upon the lines of the canals. That forest has disappeared. Throughout the broad extent of our country, with the exception only of the almost uninhabited portion of the State, called the North Woods, our country is cleared absolutely beyond what is desirable. Too much and too many acres of this State have been laid open and bare to the sun, and the forest has too completely been destroyed within our borders. What has been the result of this? As this product of transportation has, from time to time, decreased and been driven further and further back, then came up the necessity of pursuing some avocation of business along the line that would support the inhabitants of the interior of the State. And there have grown up and dotted all along the line of your canals your cities and your villages and your towns. And they are each and every one of them to-day the seat of flourishing manufactures. There the hum of industry is heard; there the work of the artisan and of the laborer is daily known and

seen of all men. And the surrounding country, instead of having any products to send to the markets of the East, are not only compelled to exhaust all that they produce within their limits, to feed these artisans and laborers, but they are compelled, through means of your transportation upon your canals, and the lakes of the West, to go out and gather in the harvests of the far West, and not even to permit the whole tide of them to go from the Empire State, but to stop them in their way for the purpose of feeding the thousands and tens of thousands who surround these homes of industry in the interior of the State. And this, sir, is the reason why to-day, so far as regards the agricultural products of your State, they do depend upon local traffic, and the local business of the State for their consumption, and not upon foreign markets. But, sir, while this is true—while this has been the past experience, and must continue to be the experience in the future, it has opened up State after State, Territory after Territory, and where there were but a few and feeble bands of men stretching out into the far West of the country, now they are numbered by their hundreds, their thousands, their tens of thousands, their millions, and their tens of millions of people. They set themselves down in a purely agricultural country; they give themselves to the production of such matters as grow from the soil, and they are under the necessity of stretching their hands out to the East to get the articles of manufacture which are necessary for them as a people, and they send down on the other hand bread throughout the country, or the cereals and the grain to pay for those manufactures. And it is for our interests as a people, it is for our interest as a commercial people, it is for our interest as a carrying people, that this state of things should continue; because if the tide which is now flowing through our State and across our country to the sea-board shall by any possibility be checked in its onward movement, then you will transfer over to them, as there has been from time to time transferred within the limits of this State—manufactures, great and growing manufactures will rise up upon the prairies of the West, which will dot every one of their rivers, which will be put upon every one of their plains, and they will raise and consume there the products of the soil in supporting and maintaining their own manufacturers. It is therefore for the interest of the people of the State of New York particularly, if not for any other of the sea-board States of the Union, to see to it that the broadest and most open channel that can by any possibility be given, shall be given to this people in seeking an outlet for their products to the sea-board of the country. Now, sir, I have undertaken to say in this Convention that the Almighty has placed a depression of the Alleghanies within our midst that is perfectly incomprehensible unless we look at it in the light of the great and divine Providence, for the purpose of passing over the great barrier between the West and the East. But I hold it also to be none the less true that although that depression has been made, that although as with a plane the inequalities have been stricken down, yet unless man shall aid

in the effort to utilize it we shall lose all the benefit and all the advantage that would otherwise grow out of it to us. Now, sir, before going into the minutiae of this matter, permit me to go a little further in this direction. I have heard the gentleman from Orleans [Mr. Church], and I have heard others, talk about the "scarcity of competing lines," about the idea that it is impossible to divert this great trade from us; I trust that the people of the State of New York cannot be so foolish, cannot be so improvident, cannot be so regardless of the advantages which they have got, as to fail in securing them by putting them in the best possible shape, so as to avoid the possible diversion of this naturally great trade from among us. I ask the gentleman from Orleans [Mr. Church], I ask all the members of this Convention, to go with me to-day and stand upon the banks of that lordly river of the West, that takes its rise in the snows of the far off North, and boils its waters with the heat of the tropics as they fall and glow in the Gulf of Mexico—I ask them to stand with me upon the banks of that river at St. Louis, a city that but a few short years ago was a mere hamlet in the wilderness, and now claims its two hundred and fifty to three hundred thousand souls within its limits, and what will they find there, sir? They will find that the Mississippi river has been opened by the strong hand of the people of the West and of the North, and that its waters flow uncontrolled and untrammelled from the highest point of navigation to the Gulf of Mexico. And they will find standing alongside of the levee there, sir, row after row, not of steamboats alone, but, catching the idea from our own Hudson, they will find magnificent barges, large and capacious, carrying their forty and fifty and sixty thousand bushels of grain, lying in long lines in front of the elevators which have been put upon the bank for the purpose of elevating grain into them, receiving their cargoes of grain and as they have been filled up from time to time, two, three, four, five or more of them attached to some powerful steamer, and wending their way down with the downward rush of the river to the South, and as they arrive at New Orleans they will find them again alongside of some ship with its white wings just ready to waft it across the ocean, another elevator transferring this same grain from the hulls of these barges into these ships, passing it across the Atlantic—rendering no tribute to the State of New York, rendering no tribute to this empire city, the queen of commerce, which sits at the foot of the noble Hudson. But passing out of the way from our control entirely and forever—this great mass of commerce is thus diverted from among us. And, sir, it is done because of the fact that there is not sufficient capacity, and it is known that there is not the capacity within the limits of our State of New York under our present system of canals, and with our railroads, to drain this great mass of moving freight. Why sir, they know that we cannot take this volume on top of that which must necessarily and actually come here as in the past with all the increase that alone blocks us up and enhances the cost of movement, as is taking place to-day at Buffalo, as will take place until you give greater capacity and

volume to your canals. Up, up, are going the freights, even now, and up they will continue to go until the impression of the cost of freight upon the value of the property will be too great for it to seek this way to the markets of the world. Why, sir, even, now, as I am speaking, there are coming into Chicago and Milwaukee, each and every day of the week over five hundred thousand bushels of the grains of the West and the beginning of that tide has already reached Buffalo, and each and every day there is going up the scale of prices for transportation of property and there is being sent now through your canals a volume of traffic, constantly increasing in extent, that will take up the entire, and more than the entire of the capacity of your canal, from now until the end of the season. And there stands, like the hound in the leash, the New York and Erie railroad and the New York Central railroad, and when the amount of price shall get so high as to make it an object for them so to do, and the volume of traffic so great that the canal cannot receive it, they stand ready to take the pound of flesh from the man of the West for the transportation of his property, that he must send through this State to market. Sir, it is true, entirely true, that so far as it regards the great mass of the productions of the West, taking the rule of transportation in reference to its value at home and its value abroad, that we can afford to put the price of about twenty cents a bushel from the city of Buffalo to the city of New York for the transportation of grain. To-day it is twenty-four cents, and before the snow shall fall in the coming November, it will be thirty cents from the city of Buffalo to the city of New York. And just so sure as this is permitted to continue, just so sure as in the coming future we shall have done, as we have foolishly and recklessly done in the few years past, just so sure will be the result that a large portion of this trade and traffic which now flows through your canals, will seek cheaper and easier transit to the markets of the world. Now, sir, in this connection permit me to say another thing. There is no scare—there is not an attempt at false alarm—but I ask gentlemen to look at another project, a project which is already about closed, so far as the initiation of its beginning—a project which was dear in the past to the father of his country, one which he always was in favor of, one the initiation of which he undertook even in his lifetime, one which has been the desire and the anxiety of the people of the State of Virginia from that day until this. They have clung to it with a tenacity that is perfectly incomprehensible. They now, having been rid of the incubus of slavery which held them ground down to the dust in the past, having been enabled to see in the light of the past few years of our history that there is a future for them in another direction, and that that future is in commercial rivalry with the great State of New York, they are now waking up again to the necessity and the importance of that great line of communication running from the South, from the capes of the Delaware back to the flowing waters of the Ohio. They, sir, have already engaged and enlisted, because they have

not come to the North for the reason that they doubted whether the North would help or aid them in this regard, probably from two reasons, one that it would be against our interest so to do, against our own rival means of transportation, and another because in the strife which had been engendered between us in the late conflict they have become exasperated and are not yet reconciled, they have gone abroad, and they have obtained so far as we can find from statistics which are already before us, not only the favorable, but the absolute engagement upon the part of the French capitalists to come in and make available for their purposes in the future this great internal work of navigation. From Norfolk to Richmond by the James river, navigable 130 miles; from Richmond to Lynchburg by a canal now in existence, 146 miles; from Lynchburg to Buchanan by canal, 50 miles; from Buchanan to Greenbrier river by canal, 34 miles; Greenbrier river slack water, 50 miles; New River slack water, 50 miles; Kanawha river, 89 miles—606 miles, divided as follows: canal navigation 277 miles, over two-thirds of which are already built; river navigation 329 miles to the Ohio river, 190 miles above Cincinnati, making a distance from Cincinnati to Norfolk 796 miles; while the distance from Cincinnati to New York by way of the lakes, Erie canal and Hudson river is 905 miles—difference in favor of the Norfolk route 109 miles, going through a portion of the country that for a great portion of the year is navigable, not affected by the frosts and snows as our lakes and rivers are; entering on the sea-board in one of the most commodious harbors upon this continent, where they are never in any way impeded in their navigation from one year's end to the other; in a perfectly healthy portion of the country so far as regards its effects upon the products which shall be there sent to market; in every way a desirable point at which to reach the sea-board; as accessible to the far off eastern country as the city of New York; a rival to the city of New York in the interest, if you please, of the French; undertaking to rival also the English in their trade between Liverpool and the city of New York. Now, sir, it has been said that so far as regards this transportation to New Orleans that the climate interferes, and there are portions of the year there when by no possibility can these articles which are perishable be transported in that direction. There is no such objection to this Norfolk route; there nothing of this kind can by any possibility enter into the controversy. But permit me to say, in passing, in regard to the New Orleans route, that it is held, and held strenuously, and held affirmatively, said to be the truth, that the transfer of grain by means of the elevator at St. Louis, and the retransfer again by means of the elevator at New Orleans, insures the grain from decay or corruption, on account of the effect of the climate. And that it is exactly as safe at almost any portion of the year, so far as the durability of the article transported is concerned, to take it by way of New Orleans as to take it across the country by way of the lakes, canal and river to the city of New York.

Mr. DALY—How do those proposed rivals of ours, by means of the Kanawha river, propose to cross the Blue Ridge and Alleghanies?

Mr. ALVORD—The rivers run from very near together. They do it by lock and dam. The depression of the Alleghanies there is very easily overcome; and the waters flow from near the top of the Alleghanies, and become, very quickly after leaving the Alleghanies, navigable streams.

Mr. CONGER—In the statement the gentleman has just made, and which I believe comes from the report of the Senate Committee, on which the report of the Canal Commissioners was made to this Convention, the honorable gentleman in giving the difference in the length of that route as between river navigation and canal navigation has taken the figures of the committee, but he will find, I think, that there are one hundred and ten miles of slack water navigation, which have been added to the river navigation instead of the canal. I would ask him if that would not make considerable difference in the time of transportation.

Mr. ALVORD—It does not strike me that there would be any very great difference whatever between slack water and river navigation. I should think it would be in favor of slack water navigation, taking it both ways, as you would not have to contend with the current in ascending the stream when the navigation is made as it is called—slack water by means of locks and dams. Another thing, sir. In this connection permit me to talk a little about the northern route. The gentleman from Orleans [Mr. Church] stated in reference to that matter, about the fact that there was a Welland canal in existence, and that they had brought vessels from Lake Erie down to Lake Ontario, and made them fall about three hundred and eighty feet more than they do. The gentleman from Orleans [Mr. Church] made them fall seven hundred feet, and their actual fall is three hundred and twenty-three feet, so that he made them fall three hundred and seventy-seven feet too much. That Welland canal, sir, while upon the western lakes of this country, they were contented with their small vessels carrying from three hundred and fifty to four hundred and fifty tons, that Welland canal diverted from the canals of this State, and carried down upon Lake Ontario, parts of it going to the city of Oswego and parts of it going to Kingston, Montreal and Quebec, and so to the ocean, vast amounts of produce which, up to that time, had gone through our canal and paid toll to our line, and found our city of New York as its ultimate market. But, sir, in process of time, in the improvements that were thought of and put in operation by men (all things can be improved but the canals of this State—every means of transportation, upon the railroad, upon the river, upon the ocean and upon the lake—but the canals are past all hope of that improvement forever); but let that pass, sir. The people living upon the line of those great western waters came to the conclusion that there was improvement in their direction; and what did they do, sir? And here I want to produce an argument out of this, which, it seems to me, is perfectly unanswerable, in regard to the size of the boats having to do with the cost of transportation. The Welland canal, while the vessels in the Upper Lake trade were of the size which

could pass through it diverted trade from Buffalo, sent it to the city of Oswego, and thence through the canals of this State to New York cheaper than it could be done by way of the city of Buffalo. It had to go over this Welland canal to overcome this entire fall between Lake Erie and Lake Ontario, to go across the latter lake on its winding way, a longer distance to the city of Oswego, and it was enabled there to discharge into canal boats and carry the products of the country to the city of New York cheaper than it could be done through the Erie canal by way of Buffalo. But the people, as I said, upon the western waters, woke up, they came to the conclusion that they had not seen sufficient capacity of boat, that they had not yet enlarged enough their ships and their schooners and their steamers, and to-day they float into the harbor of the city of Buffalo, by that great internal sea of ours, vessels carrying fifteen hundred tons burden, holding in their capacious bodies forty, fifty, sixty, seventy thousand bushels of grain. They cannot be compressed small enough, they cannot be cut off short enough to go through the Welland canal, and the result of carrying in such great burden as that into the port of the city of Buffalo is that it so cheapens the transportation of the article that they cannot compete, by way of the Welland canal, with the Erie canal, taking the property at the city of Buffalo. And let gentlemen turn to the tables—let them look at the results of the past three or four years—and they will bear me out in the testimony I have given, that the price of freight has always ruled ever since the introduction of these large-capacity vessels into Buffalo, in favor of Buffalo and against the city of Oswego, although Buffalo had a continuous line of navigation upon our canal, one hundred and forty miles more than from the city of Oswego to the city of New York. Now, sir, the people of Canada are not dead; they are already agitating, and they are agitating with probability and a strong probability of success, within less than twelve months of the time I am talking here in favor of the enlargement, of their Welland canal, so that its capacity shall be great enough to take this large class of vessels that now go into Buffalo harbor, and carry them through the Welland canal upon lake Ontario. And whether we build a Niagara ship canal or not, they will build a Niagara ship canal, and they will pass this property from one lake to the other, and let us see what becomes of the property then, and I ask the people of the State of New York to listen to me, in regard to this matter, and see whether I am telling that which may not happen in the future. They have tried the experiment in small vessels that have gone from the lakes in the past, and carried them down through their small canals, out upon the broad Atlantic Ocean, and they have carried them through in every instance that they have done so, successfully—they have found that when their vessels got upon that broad ocean, they have been built with capacity for burden and speed far beyond anything that ever before traversed the ocean, and as mere matter of speculation, they have been sold for large prices and have not again returned to the waters of the western lakes. But, sir, I

wish to say another thing in connection with this, which is a matter of history and a matter of record, that in making her great works of internal improvement, Canada has had her eye to this great western trade, and she has laid broad and wide the foundations of her canals. She has made long and broad her locks, and although to-day they pass through vessels bearing a capacity for draft of only some seven feet, yet they have left them in a way where, by placing upon the top of the sides of the canal earth, which is adjacent and handy, and by putting stone upon the top of the locks where they have been made of sufficient size, in order to enable them so to do, they have got but little more to do toward finishing those great works of internal improvement when, with the Welland canal finished, they will have one continuous line of canal going around the rapids of the St. Lawrence, passing a vessel carrying an unbroken cargo of fifty thousand bushels from Chicago in the West until it shall have reached Liverpool in England. I tell you, men of New York in this Convention, that this is no idle tale—this is written in the decrees of the future unless you shall place in the way the means of getting to tidal waters of your own State so cheaply that will forbid even this gigantic project from being a financial success when it shall have been completed. Again, sir, there is also stretching from the North the Georgian bay, as it is termed, the great indentation of Lake Huron, into the opposite coast from our own; a point where, by pursuing their way up a navigable river, they are within twenty-seven miles of a stream which lets them down through Lake Simcoe and down through Toronto into Lake Ontario, with a saving of over four hundred miles distance from Lake Michigan to the sea-board. It has been demonstrated by the ablest engineers that Great Britain can produce, who have gone up into that country and examined it with care and caution—it has been demonstrated beyond the possibility of a doubt that the twenty-seven miles of artificial canal will establish, beyond all question, safe, rapid and easy transition of the vessels that navigate Lake Michigan into Lake Ontario without passing through the St. Clair river down the Detroit river, through Lake Erie and the Welland canal to Lake Ontario. There is still another route in the extreme north, but, sir, so far as that route is concerned I am satisfied, owing to its being so far up in the northern portion of the country, that it cannot by any possibility, although there is no question of its feasibility, for a very considerable portion of the year, cannot by any possibility for long years to come, come in the way of any competition with any works of internal improvement that lie south of it. Another thing, sir, we have another competitor; we have the Baltimore and Ohio railroad, we have the Pennsylvania Central railroad, and we have within the limits of our own State of New York the New York and Erie railroad and the New York Central railroad. Now, sir, while I hold that, if with a due regard to the interests of the people of this State, we shall maintain, protect and preserve, and so far improve our works of internal navigation as to meet the demands of commerce, that we have nothing whatever to fear from these latter mentioned

rivals of trade. Yet the entire tendency of all those who are opposed to us in this great scheme of improvement is to drive us to the necessity of going to these other works of transportation for the purpose of doing the business of the people of this State. I think, sir, that the people of the State of New York will rue the day in sackcloth and ashes when they shall undertake to permit the great railroad interests of this State to overcome them so much as to bind them hand and foot so far as it regards this great regulator of the commerce of the country—the Erie canal. I hold that the fact is to-day, and I trust that the people of the State of New York in their wisdom will have it true for all time to come that the great benefit and advantage of this work of internal improvement of ours is not so much the revenue that it puts into our coffers, it is not so much the toll it may raise and roll up million by million each year for the purpose of adding to the revenues and paying the indebtedness created by its building; but it is because it is the regulator of the traffic of the country, it forbids these monopolies to coerce the people. I speak of them in no offensive way—I speak of them because they cannot be other than monopolies, for they are the work, they are the property, they are under the control of men who look not to anything else except their own immediate interests. When the interests of the people of the country shall chime with theirs, then they are for the public interest; but when that interest is in opposition to theirs in a pecuniary point of view, then the interest of the public has to succumb to the interest of the corporation. Now, sir, I undertake to say that it is the history of the past, and will be the history of the future, that instead of controlling the canals of this State, instead of running them down, so far as regards their business, that the canals of this State have been the controllers of the railroads of the State of New York, and, through them, the controllers of the country. Go with me, sir, if you will, and look at the way in which these railroad companies make up their terms of transportation. When the winter closes and the fetters of ice bind up the means of communication along the lines of our noble canals, then the New York Central railroad boasts its triumph; up go its prices to the point where it thinks it can bear them, and the Pennsylvania Central, and the Baltimore and Ohio, and the New York and Erie follow in the wake. It is true that in the struggle in the far West for traffic when it shall be sparse and small in degree there may be conflict between these opposing and contending means of transportation, but when the volume is full, when the capacity of the roads is reached, in all these western quarters, then it is that the Central impresses the point of departure. All follow in its wake thereafter. But when the coming thaw of spring has taken away the fetters from our means of internal communication by water, then down comes that proud flag; it is lowered before the greater superiority of the means of communication by way of the canal. And then again, down falls the Central in order to compete with the canals of the country; and down falls each of the other roads of the country, following in the wake of the Central, which,

through the impression of the canals of the State, put upon the traffic of the country a limit to the prices by which it shall be carried from the West to the East. And, sir, with no unfriendly feeling, with no desire to step out of the line of true argument in this regard, but simply for the purpose of impressing facts upon this Convention and upon this people, I wish to say in this connection a few more words in reference to the traffic upon the line of our railroad. It is notorious, beyond any question of doubt, that so far as it regards the New York Central railroad, and I believe the New York and Erie, that they have sworn, and they have unquestionably sworn to the truth, that it costs them to transport their property over the lines of our railroad two cents and seven hundredths a ton a mile. It cost them that in the year 1866, varying in different years, but never going below one and seventy-five hundredths, and some years as high as two and fifty-five hundredths. Now, sir, what do we know to be the fact? We know that it is the invariable custom of the New York Central railroad, and that it is followed by the action of the New York and Erie railroad, carrying, in conflict with the canals of this State, property from Buffalo to the city of New York to carry that through freight at a cost which is an absolute loss to them under the sworn statement of their officers in regard to the cost to them of transportation. Their antagonism against the canals of this State for the purpose of getting this business, is so great that they openly, undisguisedly, each and every day of navigation, upon the lines of the canal, charge upon articles where the canal competes with them in transportation a smaller price than they have sworn it costs them to carry the freight by the ton from one point to the other. How do they recuperate? Where do they make up? They make up largely in their transportation in the winter. That is not enough. Wherever they diverge from the canals of this State in their way to tide-water, there you will find that with the iron hand of power, working upon necessity, they impose the largest possible price that they can get the transporter to pay for the transportation of the property. They compel the people of this State, off the canals, and who are thus at their mercy upon the lines, the people who have created them and given them their franchises to pay for their mad competition with the canals of the State in the transfer of property throughout the entire line of the State, to pay dearly. Now, sir, I ask in Heaven's name, whether by any possibility we are to permit ourselves ever, for any financial reason (I propose, however, hereafter to look at that financial reason before I get through, and endeavor to prove that the position taken by the gentleman from Orleans [Mr. Church] is entirely untenable)—whether we can ever permit ourselves in this State of New York to give up our hold of our present canals or their improvement to the utmost capacity that the ends of commerce may require in the broad light of the certainty of such an overwhelming and irremediable calamity as would befall us if left to the tender mercies of railroad corporations holding all means of communication in our State to themselves, whether it should be brought about by a neglect or sale of

our canals. Why, sir, I listened with a great deal of interest to the long talk had in the minority report of the Committee on Finance, in reference to the fact that the ability of the railroads had not by any means been reached, and that the time would come when they would transport all the property that might be needed, and do it much more effectually and much better than by any possibility the canals of the State could do it. For the purpose of examining this question so far as that particular point is concerned, I avail myself of the means within my power where I know that I could not be mistaken in regard to the matter, for the purpose of seeing what effect the transfer of the business done in my locality, saying nothing about the rest of the State, just at the present moment, but what the effect of the transfer in the way of the transit of the property from my locality would be, what the result would be to transfer it from the canals to the railroads. And in doing so I took the actual cost to ourselves paying to the freighter or to the boat-owner all that he demanded both for the tolls to the State, the cost to himself and the profit that might arise to him from the transfer of the property on the canals, and upon the other hand I took the sworn cost to the railroad, taking the Central railroad for the year 1866 as a guide. I wish gentlemen to understand me that in one case it includes the entire cost to the owner of the property, and in the other case it is the sworn cost to the railroad, provided it had had it to transport. I find that in the year 1866, we transported from the city of Syracuse to the city of New York, 1,503,645 bushels of salt, weighing 42,101 tons; that we actually paid for that transfer, including toll and handling in the city of New York, putting into warehouse, \$89,675.13. I find by computing the cost to the New York Central railroad, that it would have cost that railroad to transport it, having the property delivered upon the cars and taken away from the cars when it arrived in the city of New York, \$251,763.98. I find that we sent to the city of Buffalo, 2,714,040 bushels of salt the same year, making 79,993 tons; that it cost us to handle, ship and receive it \$95,981.60. I find that it would have cost the New York Central railroad to transport that, without handling it in any way, \$251,177.02. I find that we transported to Oswego the same year 2,325,200 bushels of salt, weighing 65,121 tons, costing us (not to repeat the entire statement) \$34,514.13; that it would have cost the railroad, if it had transported it, \$51,445.59. I find that we transported to Albany 350,400 bushels, weighing 9,811 tons, at a cost of \$17,659.80; that it would have cost the railroad \$42,775.96. To Elmira, 243,200 bushels, weighing 5,809 tons, at a cost of \$4,647.20; that it would have cost the railroad \$16,439.47. Difference in favor of canals, \$371,124.14. Add extra handling to and from railroad on 1,427,297 barrels at twelve cents per barrel, \$171,275.64; and I have charged here only twelve cents, it having cost us six cents, in very short hauls to the railroad, and I call it six cents when it is taken away from the railroad. But every man who hears me, knows that in New York, Albany and Buffalo, the cost of haulage from the rail would be

vastly more—from 20 to 30 cents per barrel. That it is nearer twenty-five cents than six. The actual difference of the whole charge on the canals is, \$542,399.80. Add average profit of railroad as per New York Central sworn returns in 1866, \$243,069.03. Cost and profit of railroad according to sworn returns of New York Central for year 1866, \$856,671.05. Total cost to owners on canal, including tolls, \$242,477.06. Total charge per sworn average on New York Central railroad, including extra handling, \$1,027,966.69. Extra on railroad, \$785,488.83. Average per barrel by canal, 17 cents; average per barrel by railroad, 72 cents. Railroad over canal, 59 cents, or 347 per cent. Average railroad charge, less haul, 60 cents, or 253 per cent. And while in this connection I state to these gentlemen, and state it upon my honor as a man and as a member of this Convention, that we made out of this entire amount of salt that year, less than \$75,000. You will see what the people of the State of New York, and the men who used the salt made there, would have had to pay in connection with what they did pay, if we had had this transported on the railroad and not on the canal.

Mr. YOUNG—Will the gentleman allow me to ask a question? Is there not a discrimination made in the tolls of the State in salt and other articles freighted on the canals? Is not the toll on salt very light?

Mr. ALVORD—It is a mill and a half per 1,000 pounds a mile. It is as high as everything else, with the exception of two or three articles, higher than a great many other articles.

A DELEGATE—How is it, compared with lumber?

Mr. ALVORD—I believe it is a little lower than lumber. That is two mills per 1,000 pounds a mile.

Mr. CONGER—What would it be if counted at the rate of merchandise?

Mr. ALVORD—Four mills. Gentlemen may put the toll on it even at the price that they talk about, and still the amount would be over five hundred thousand dollars difference. Now, at the same time, sir, and in the same connection, we transported for the use of the salt works 134,674 tons of bituminous coal, at a cost of 75 3-10 cents a ton, amounting to \$101,409.52.

Mr. LAPHAM—Brought it from where?

Mr. ALVORD—From Watkins, at the head of Seneca lake, and through the Cayuga and Seneca canal to Montezuma on the Erie canal, and from thence to Syracuse. And the gentleman will recollect that in bringing this coal and taking this salt from our place, that it is taken directly to the point where used, where discharged, at Buffalo, at Oswego, at New York, at Elmira, at Albany, directly from the docks, where it is transported directly into other vessels, or directly from vessels into canal boats. This is so with coal. Coal is carried directly to the manufacturer, each manufacturer having a dock upon the canal, so it costs nothing to handle. The cost of it was \$101,499.52. The sworn cost on the Central railroad would have been \$330,105.71. To add the excess of this transportation and the result would have been that, so far as it regards the commodity in which we deal, in which I have stated we made

less than one hundred thousand dollars, in the year 1866, we would have had to put on top a million dollars more in order to have paid the cost of transportation upon the rails as against the canal. Now, sir, in connection with that it must be perfectly apparent to every one that for doing the business of our locality it would be an impossibility, almost, to do it all by rail. Why, sir, it would require in our locality for the purpose of having easy access to the road with the necessary turn-outs, switches and side lines, over fifty miles of rail. It would employ a large portion of the center of our city for the purpose of finding means to get in and out, with the necessary cars in order to approach the manufactories, etc., for the purpose of receiving our coal and shipping our property. So it is idle to talk about, that we may be driven, in the course of human events, to a policy which would fasten upon the people of the State such a state of things. It may not be of any importance to the people of this State, it may be of no importance to the great wealth of the State, which in the judgment of its advocates is to be doubled, by carrying out this magnificent scheme of railroads all through the State, whether or not by that process the city of Syracuse should be blotted out forever—so it may be for the interest of the whole State to say that the time shall come, when we are not enabled in the cheapest possible manner, in which it can be done, to transport the articles of our manufacture, upon the inland and internal communication by way of the canals of the State, and that our business must entirely cease, and the property of that locality and the locality itself shall become of the things that were. Sir, what is true of that locality (and I have only brought it up here as an example and because I was enabled to stand up in my place here and give the exact figures, enabled to do so by having access to the books)—the same is true of almost every locality in the interior of the State upon the line of our canals. Let me point you to one single case, which shows beyond the possibility of a doubt, that which I say is true. In the far off ages of the past, almost to that time, beyond which the memory of man doth not run, there was a history of a great commercial city being upon an oasis in the very midst of the sands of the desert; and it was because the limited knowledge of man was such at that time that they thought they could only take straight lines of departure from one great point to another. Palmyra started, flourished and grew. But time, sir, hath obliterated her from among the cities of the world, and the sands of the desert have covered her up; so that the place of her habitation shall be known no more forever. Sir, in the history of this world there never has been, and in my opinion there never will be, a great and flourishing city, or continuation of cities in growth and prosperity, unless they are upon the line of the great water-courses of the country. I ask you to look at the history of railroads in this country. Have they ever built up, except at their termini or where they have struck those cities upon the great water communications, by means of which there could be competition in the traffic—any of the great cities of the land. Go upon the line of the New

York Central railroad, and point me to a single spot improved as a city or village on the line of that road, where it fails to touch upon the line of the canal in its onward progress in this State to Buffalo; and I will show you dilapidated and ruined villages, the roof-tree of many a house fallen in and the ashes upon the hearth-stone cold. The railroads are not for the purpose of building up cities, towns and villages in the interior of a country. They are great public necessities it is true, and as they are such necessities, they should be fostered and cherished among us; but whenever you can bring along the people's highway of water—whether it is the highway which God himself has furrowed out among the everlasting hills and across the wide plains of the country, or whether it is made by the hand of man, it is the "people's highway;" and along its line and upon its banks will spring up your beautiful villages and your splendid, magnificent cities. Thus only will you build up among you those great aggregations of people away from the great termini of the country. We are, so far as we are concerned as a people in this country, and in all other countries, tending to get too much together to one common center; we are aggregating our population at the extremes of our State, and we should, as a matter of political economy, as a matter for the best interests of the people of the country, see to it, to stay the progress of this disease as much as possible, to keep open the lines of internal communication by way of our canals, and leave it for every man to go upon its placid waters to carry forth the products of his industry, or for the benefit of others, their products to the markets of the world. You will cluster around those places, where overnight the boatman shall stop, waiting for the early dawning of the morn to wend his way onward, a little gathering of human beings, and the produce of the county shall stream down to the common point of departure for the purpose of finding their way to the great markets of the world. You will gradually have a little cluster of houses, which will increase to be a hamlet, and from the hamlet to the village, and, finally, manufactories will spring up around it, the population will aggregate, and in the course of time it may possibly grow as your Utica, your Syracuse, your Rochester, your Lockport and your other large towns in the interior of this State, have grown up from tiny hamlets into large centers of intelligence, wealth, activity and of power.

At this point Mr. Alvord, without yielding the floor, gave way.

Mr. FIELD—I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Field, and it was declared carried.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. SHERMAN, from the Committee of the Whole, reported that the committee had had under consideration the reports of the Committee on the Finances of the State and the Committee on Canals had made some progress therein, but, not having gone through therewith, had instructed their Chairman to report that fact to the Convention and ask leave to sit again.

The question was put on granting leave to sit again, and was declared carried.

On motion of Mr. Murphy, the Convention adjourned.

WEDNESDAY, September 4, 1867.

The Convention met at 9 o'clock A. M.

Prayer was offered by the Rev. A. A. FARR.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. L. W. RUSSELL presented the petition of Clark Maine and others, citizens of St. Lawrence county, praying for the abrogation of the Board of Regents of the University.

Which was referred to the Committee on Education.

Mr. FRANCIS presented the petition of A. B. Knowlton and others on the same subject.

Which took the same reference.

Mr. HARRIS presented the petition of R. M. Brooks and others on the same subject.

Which took a like reference.

Mr. FLAGLER presented the petition of William Pool and others, citizens of Niagara county, on the same subject.

Which took a like reference.

Mr. CHERITREE presented the petition of W. W. Rockwell and others, of Glens Falls, on the same subject.

Which took a like reference.

Mr. ARMSTRONG presented the petition of Jared A. Wells and others, residents of Petersburg, Rensselaer county, on the same subject.

Which took the same reference.

Mr. ARCHER presented the petition of Jefferson Shenna and others, citizens of Wayne county, on the same subject.

Which took a like reference.

Mr. KETCHAM presented the petition of G. W. Cowles and others, on the same subject.

Which took a like reference.

Mr. EDDY presented the petition of J. H. Ramsey and others, on the subject of bonding towns for railroad purposes.

Which was referred to the Committee of the Whole.

Mr. E. BROOKS presented the petition of T. S. Lambert, against the abolition of the Board of Regents of the University.

Which was referred to the Committee on Education.

Mr. E. BROOKS—I also present the petition of P. W. Engs and others, which represents five millions of capital, and some fifteen or twenty millions of annual business, remonstrating against prohibitory legislation.

Which was referred to the Committee on Adulterated Liquors.

Mr. VERPLANCK presented the petition of Thomas Russell and forty-two others, citizens of the town of North Collins, Erie county, against donations for sectarian purposes.

Which was referred to the Committee of the Whole.

The PRESIDENT presented a communication from the Senate Committee on Canals, etc.

Which was laid on the table, and ordered to be printed.

Mr. SEAVER, from the Committee on Printing, submitted a report.

The SECRETARY proceeded to read the report, as follows:

Your committee, to whom was referred the following resolution, to wit:

Resolved, That the Constitution, with notes, be bound in the same style as the Manual, and that two copies thereof be given to each member." Would respectfully recommend the adoption of the following resolution:

Resolved, That the printer to this Convention cause one copy of the annotated Constitution, to be bound and lettered in the same style as the Manuals already delivered, to be given to each member, and that he shall cause the remaining copies to be half bound in law sheep, and lettered and distributed as follows: After answering the requirements of rules 42, 43 and 44, five copies shall be given to each member for distribution, and the remainder to be deposited in the State library, to be used in making the usual literary exchanges.

J. J. SEAVER, *Chairman*.

The question was put on agreeing to the report, and it was declared carried.

Mr. ALVORD—I move you, sir, that the order had in this Convention to take a recess at two o'clock, and meet again at four o'clock, be so far altered to meet at seven o'clock instead of four.

The question was put on the motion of Mr. Alvord, and it was declared carried, on a division, by a vote of 46 to 38.

Mr. EDDY—I desire to ask leave of absence for the balance of this week.

The question was put on granting leave of absence, and it was declared carried.

Mr. BARTO—I desire to ask leave of absence for Mr. Magee for three or four days, on account of sickness.

No objection being made, leave was granted.

Mr. BARKER—I ask leave of absence for myself for this week and next week.

No objection being made, leave was granted.

Mr. MERWIN—I ask for leave of absence for Friday of this week.

No objection being made, leave was granted.

Mr. HALE—I wish to call from the table a motion to reconsider the resolution that this Convention do adjourn on the 10th of September. I think it is pretty evident to the Convention that they cannot get through their business by that time.

Mr. E. BROOKS—I understand that this resolution, practically, and according to the rules, lies upon the table, and the effect of the existing order of things would keep the resolution there and make it of no effect.

The CHAIRMAN—The Chair so understands.

Mr. F. BROOKS—I would suggest that it is entirely unnecessary to take this up; it would be better to leave the Convention just where it is.

Mr. HALE—The motion to reconsider was made the same day the resolution was adopted, and it was laid upon the table.

The question was put on the motion of Mr. Hale, and it was declared carried.

The question then recurred on the resolution.

Mr. ALVORD—I move that, for the present, the resolution do lie on the table.

The question was put on the motion of Mr. Alvord, and it was declared carried.

Mr. WAKEMAN—I ask for indefinite leave of absence for Mr. Baker on account of ill health.

No objection being made, leave was granted.

Mr. S. TOWNSEND—I desire to offer a preamble and resolution, and ask that it lie on the table.

The SECRETARY proceeded to read the preamble and resolution, as follows:

WHEREAS, The laws passed by the Legislature at its last session, near one thousand in number, are not yet, after a lapse of nine months, published in a form that is accessible to the people of this State; and,

WHEREAS, A proper opportunity of knowing the nature of the statutes under which we are governed is the inherent right of every citizen; therefore be it

Resolved, That the Committee on the Preamble and Bill of Rights be requested to insert in the article prepared by their committee, if not otherwise provided for by the action of this Convention, in substance the following provisions: The Legislature shall provide for furnishing for public inspection, every district school library in this State with a copy of those issues of a State paper, to be published once a week, as shall contain the laws of the State as they shall be from time to time enacted, and such notices as are required to be published thereon; and also for the publication, within sixty days after their adjournment, of all laws passed at each session, and also of any judicial decisions they may deem expedient. The Legislature shall also provide that, on or before the 1st day of January, 1870, there shall be prepared and published a revised code of the statute laws of this State then in force.

Which was laid on the table.

Mr. HALE—I ask leave of absence for myself until Tuesday morning.

No objection being made, leave was granted.

The Convention again resolved itself into the Committee of the Whole on the reports of the Committee on Finance and the Committee on Canals, Mr. SHERMAN, of Oneida, in the chair.

Mr. ALVORD—Mr. Chairman, when I concluded my remarks last evening upon the subject under consideration before the committee, I had at that time, or just previous thereto, undertaken to speak about the fact that so far as regarded the present and the future business upon the lines of our canals in this State—more particularly the great trunk lines, the Erie, the Oswego, the Cayuga, and Seneca and the Champlain—they must depend for that business upon territory outside of the State; that such had been the changes of business in this State—growing out of the very fact of the establishment of these canals—that the business of this State, originally thrown upon the canals had almost entirely ceased, and that we must look for our future revenue, and for our future trade and commerce upon territory outside of the limits of the State of New York. In that connection, sir, and for the purpose of showing the truth of the statement I have made, I would call the attention of the committee for a few moments to the statistical results of the business of the past year upon the canals. I can do it better by

stating the results of the tolls rather than in any other way. According to the Auditor's statement in 1866, the amount of tolls received by the entire of the canals of this State was \$4,436,639. Of that amount, according to this statement, the tolls received on property coming from other States were \$2,893,386. By investigation, in this connection, in the canal department, I find that there are not included in that the coal boats, because of the fact that the coal which moves upon the lines of our canals in this State reaches the canals within the State, and for that reason it is not called property from without the State. The amount of tolls received was \$294,668. What is true of coal is also true of lumber, which was \$644,568. There is not included in this, property going from within the State. Salt which went out of the State paid a toll of \$50,969, and the merchandise going out of the State paid a further toll of \$87,138. Aggregating these amounts together, we find \$3,970,729 of tolls received upon property coming into the State from without or going out of the State into other territories, leaving the entire amount of tolls for inter-State traffic \$465,710, almost \$4,000,000 of tolls on property outside of the State, or going outside of the State, and the simple \$400,000 for tolls upon the property within the limits of the State. I desire briefly at this point to urge this consideration, not as an entirely conclusive argument, but as showing how necessary it is for the people of this State to look carefully to their interests in this regard, and to see that they keep pace with the demands of the commerce that is outside of the State pressing for entrance into, and for passage through, the limits of the State of New York. Our position is not such that we desire, for our own inter-State communication this great work of internal improvement, but it is necessary for us in our commercial relations that this avenue should be opened up for the purpose of carrying through the traffic that is pressing upon our borders from the territory outside of the State of New York. In this connection, sir, and before I get down to the points that were made directly by the gentleman from Orleans [Mr. Church] (and I shall undertake to answer him, and also to give some views of my own which he has not either controverted as yet, as I understand it, or denied), I desire to look at the trade and commerce of the canals of this State as a whole, compared with the trade and commerce of the State in other regards and in other particulars. I find, sir, by examining the report of the chamber of commerce of the city of New York for the year 1866, and I have no sort of question but what gentlemen will give to that the greatest credence, that the entire value of imports to the city of New York in that year, less specie and re-exports, were \$291,361,570. I find that the total value of exports from New York, excluding specie and re-exports of imports was \$186,665,969. I find that the total value of canal movements in 1866, in this State, was \$270,963,670. The total value of property delivered in the city of New York from canals of the State, in 1866, was \$131,000,000—exports from New York, as I have stated, \$186,000,000. The total amount of pro-

ducts reaching tide-water from canals in 1866, was 3,305,607 tons. Gentlemen will recollect that this is tons in weight. The total tonnage of the domestic and foreign vessels entering the port of New York in 1866, empty as well as full, was 2,697,335 tons; or in other words, 700,000 tons less than the tons actually floated to tide-water upon the canals of this State. The total tonnage of sea-going and river vessels built in New York harbor in 1866, including Brooklyn, Williamsburgh and Greenpoint, where almost, as I understand it, the entire of the building was going on, was 37,366 tons. The total in the State, including vessels on Lake Erie and Lake Ontario, and the others that I have mentioned, was 52,641; and the total canal tonnage built in the year 1866, was 74,630—twice the amount that was built in the harbor of New York, including Brooklyn, and 22,000 more tons than was built outside of the canals in the entire of the State. In this connection, sir, I have taken the value of the canal movement for the last thirty years, and for the last fifteen also; and for a double purpose. One is to compare the first fifteen years with the last fifteen, to show the increase; and the other is to compare it with the total movement of imports to the city of New York for the last fifteen years also. The total canal movement for thirty years, is valued at \$4,540,039,199; the total for the last fifteen years is \$3,151,240,331, showing an increase of over 200 per cent in the last fifteen years, against the first fifteen years of the last thirty years. The total movement by way of imports into the city of New York for the last fifteen years, excluding specie and re-exports, is \$3,000,038,841. The excess in the canal movement in the State of New York for the last fifteen years, over the imports to the city of New York for the same length of time, is \$151,191,490. Now, sir, to another point made by the gentleman from Orleans [Mr. Church] and the point about which I intend to speak before I shall close my labors upon this occasion. He alleges indiscriminately in regard to the canals of this State that they have been, owing to mismanagement and derangement in regard to their fiscal affairs, a curse and a burden, to a considerable extent, upon the financial industry of the State of New York. What do we propose to do? We propose to take four of the canals of this State, the Erie, the Oswego, the Champlain, the Cayuga and Seneca, and put them in a position to meet the wants and requirements of trade. If gentlemen look at these four canals, separate and apart from other canals of the State, if they have ever looked at their financial results, even in the miserable manner in which the accounts have been kept in the State department in reference to these matters, they have seen what the financial results in regard to these canals are. But, sir, I venture to say that there is not in the history of the world so perfectly and triumphantly successful financial results as have been obtained to the State of New York from these great arteries of commerce. Commencing from nothing, building themselves up upon borrowed money from the

very start, they have culminated at the present time in giving to us their magnificent structures, the value of which can hardly be estimated, and they have absolutely put into the treasury of your State, beyond the possibility of contradiction by any statement that gentlemen can get—no matter how they may get it—from the canal office in this city or from whatever source—they have paid every single dollar of their indebtedness, and have put into the treasury of your State over \$23,000,000. Sir, it is true that the canal system, as a system, has not that flourishing aspect; but the four great lines, with which we have to do in this matter, show triumphantly and beyond a question of doubt this great and this glorious result. Taking as an evidence of that we will come to the tolls of the last year, and we find by going into an accurate sifting of the various items given us by the State department upon this subject, that the entire amount of the tolls upon the whole of the canals of this State were, as I have had occasion to say already this morning, \$4,436,639. Of that amount the actual of the Erie, the Oswego, the Champlain, and Cayuga and Seneca was \$4,277,326, leaving for the balance of the canals of this State by way of donations of tolls to the government of the State, \$159,511. Right in this connection, also, take (as you can take, because they are separate) the results of the Erie and Champlain, and Cayuga and Seneca canals, in reference to the reality of the net of the past year and what do you find? You find, as I stated before, that \$3,436,000 is the amount received from the entire canals of this State; some \$1,500,000 taken out of that as the amount of the expenses of the care and management and maintenance of the canals, leaving net, to go into the State treasury, between \$2,800,000 and \$2,900,000. Examine it carefully and critically, and what do you find to be the result? These four canals that I speak of cost between \$800,000 and \$900,000 for repairs. Then give them credit for the tolls that were received from them and there would have been net, without the laterals, paid into the treasury of the State for 1866, \$4,400,000, between \$500,000 and \$600,000 more than the net absolutely paid into the treasury of the State from all the canals of the State. Another thing, sir, in this connection. It has been said that the canals of this State have never come up to the estimate made by those who have been, in the past and at the present time, their friends, and aiders and abettors, and that, therefore, any data based upon calculations in reference to their future is unreliable and unstable. I challenge, in the first place, any man to point me out where, even in the glorious days of the past forty million debt time there was a single statement made which has not been entirely fulfilled to the very letter, and even beyond. But the difficulty has been this: that while the business of the canals has increased to the extent that has been predicated upon the past movement, and will, I think, continue to do so, and even more in the future, as it has up to the present time, there has been a leak at the end of this matter. Men look at the results of the revenue, and only in that way do they look at this matter. They look, not at the increasing

volume of tonnage which is pressing each and every year with the most mathematical accuracy of improvement and increase from year to year; looking at the net of the tolls, they cry aloud among the people of the State "the canals are a failure; they are good for nothing and should be gotten rid of, filled up or abandoned for the use of railroads." Sir, if we had kept, as we ought to have kept, the tolls of 1846 impressed upon the commerce of this State, passing through its canals to-day, now with the weight of the laterals hanging upon the back of these great arteries, they would have paid that entire canal debt, and would have largely aided, if it had been necessary, in any future enterprise which the people of the State of New York might engage in for the benefit and advantage of the community. A calculation will show gentlemen that over \$30,000,000 have in this way been abstracted from the public treasury. My friend from Orleans [Mr. Church] says the true rule in this regard is to pay off this debt, and, as soon as possible, reduce the tolls upon the canals of the State. I tell him to go to the records of the railroads to see that, under their sworn statements, they have never been enabled, even since their first inception up to the present moment, to reduce transportation across the lines of our State from one point to the other to so low a point as to meet the competition fairly of the canals of the State with the tolls of 1846 impressed upon that movement. To-day, this very hour, put the tolls of 1846 upon the movement upon the canals of this State, together with the cost of the movements so far as the freight charge is concerned, and they fall 33½ per cent below the sworn cost of the New York Central and the New York and Erie for the transportation of the same articles from Buffalo to the city of New York. I charge, without fear of contradiction, that in the exceptional years of 1858, 1859, 1860, 1861 and 1862, under a false notion that there was danger of losing the trade of the canals of this State, the canal board, with the consent of the Legislature (as they were under the necessity of getting that consent, under the constitutional enactment of 1854) reduced the tolls upon the canals of this State, and by that very operation in these five years lost over \$2,600,000. They are not to-day where they were in 1846; they were reduced in 1852, just previous to the time of the enlargement policy which was inaugurated by the alteration of the Constitution in 1854, but they have reduced them down as low as possible, in some instances, below even 1852, below which they could not go by the action of the canal board, except by the approbation and consent of the Legislature. Now, in support of the position that I take in this regard, I ask gentlemen to go with me to the records of the great freight movement of the country during those years, and there is one very significant fact; that while the tonnage trade of the canals, owing to the blight upon the crops, to financial revulsions, to the difficulties that always enhance at such periods the transportation of property, they will find that the railroads of this State absolutely and actually fell off larger in percentage than the canals did during the same period of time; and he will find again that we had another serious time, 1864, 1865, 1866

were all of them more or less exceptional years; and he will find, by looking at the data in regard to those years, that, while from 1863 to 1864 there was a dropping off of the business upon the canals, there was a larger percentage of dropping off upon the business of the railroads; and while it had begun to recuperate slowly in 1865, the dropping off upon the part of the railroads, as compared with the canals, was as a difference of one to twenty-five per cent, and when they began to revive, in 1866, you will find, so far as the New York Central railroad is concerned, this astounding fact—that while the New York Central railroad failed to come up within one thousand tons in 1866, of what she was in 1864, yet the canals took a leap of 450,000 tons over 1864 in 1866. I desire to be accurate in a statement I made a few moments ago, and therefore, I will again give it in the figures in that order in reference to the results, so far as the Erie, Champlain, Oswego, and Cayuga and Seneca canals are concerned, in reference to the trade of 1866. The tolls that were received on these canals were \$4,436,637; the entire charge for their care and maintenance was \$829,531.39; the actual net revenue from these four canals was \$3,447,775.15; the net revenue upon all the canals of the State was \$2,818,235.19; so that the excess of the cost of the care and maintenance of the laterals over their receipts taken from the net of the Erie, Champlain, Oswego, and Cayuga and Seneca, was \$629,559.96. Another thing, sir, directly in connection with this matter. If the tolls from the year 1846 had been imposed upon the property which passed through the canals of this State in the year 1866, from my knowledge and investigation in regard to this matter, I am perfectly and entirely satisfied that there would not have been one single pound of freight by reason of that imposition of tolls, driven from the canals of the State of New York. Why, sir? Because even with the tolls of 1846 in addition to the cost of the freightage of the property added thereto, the movement would have been cheaper by far than the movement upon the line of the railroad. If these tolls had thus been imposed instead of having \$28,000,000 net with all the charge that has been made for the cost and maintenance of the canals you would have had \$4,000,000 in the treasury of your State. And, sir, in passing by this matter permit me to say that the Committee on Canals, having in view the past experience of the State, by means of which under the importunities of the traders upon the line of the canal, who have asked from time to time for the tolls to be reduced, not for the benefit of the State, not for the purpose of gaining more volume of trade to the canals of the State, but for the purpose of enabling them to make their end of the whiffletree the longest portion of the cost of the freightage through the State, the revenue was lessened. I say, sir, in order to avoid that in the future, the Committee on Canals have put into their article this as one of the cardinal organic laws of the State, to last at least until we shall have entirely and completely fulfilled the requirements in regard to the canals, that the tolls shall not be decreased, giving to the boards in whose custody

the tolls are, the power to increase them according to the exigencies and demands of the time. If this policy had obtained in 1846, if this had been the guide of the action of the people of this State, to-day we would have seen our canals in a position of triumphant and successful financial prosperity, absolutely pouring in a tribute into the coffers of this State, having discharged all obligations, and their incoming revenues given as a rich legacy to the future of its history. I am somewhat discursive in what I have said in regard to this matter, because I am not one of those methodical gentlemen who can sit down and map out for themselves a line of argument; but I must be under the necessity from time to time when a thought comes into my mind to give it forth to the committee as the best I have to offer upon the occasion. In reference to the antagonism between the railroads and the canals. Why, sir, but a few short days ago I was standing in the counting room of one of the eminent merchants of the city of New York, a man who for integrity, for uprightness, and for probity, which have made the foundation for him, with industry and energy, of a gigantic fortune, such as is not often found even in that great city of merchant princes. I asked that gentleman this question, knowing him to be largely engaged in the transmission of the produce of the far West to the sea-board, and in its export to foreign countries; sir, how is it so far as regards the transportation of property over the line of the railroads and the canals in cost and expense after it reaches your market of New York? His answer was, that rolling freight was principally carried upon the line of the railroad, and that it became necessary after it arrived in the city of New York to carry it from the various depots of the railroads to the points where it was desired for shipment or for storage upon the water lines of the bay; and he told me it cost over one-third in addition to the entire expense of the transportation from Buffalo to New York city to move it after it came to rest upon the cars within the limits of the city, as against nothing or comparatively a trifle, in the handling from the canal boat to where it is to go for the purpose of transportation. I asked him another thing, why is it that there is diverted, to a certain extent, certain articles of property from the canals of this State to the railroads of the State? He said there were two causes combined to produce that result; one was owing, in the fall of the year, to those vast amounts of produce of various kinds which are pressing for an outlet, blocking and filling up the channel of the canal, rendering it difficult and troublesome to get through the locks, and making a voyage trip which, under ordinary circumstances, ought not to last over nine or ten days, to extend to twelve, fifteen or twenty days. That was one of the reasons. Another was that for the last few years such had been the speculative feeling of our people that they were gambling to a very large extent in those articles of absolute necessity, the same as they were gambling in paper stocks in Wall street. They gambled at short dates, at short sights, and without any necessity as it regarded the demand and the supply; the market constantly vacillating, upward one day and down-

ward the next, so that it became necessary they should realize in the quickest possible time upon the property in which they undertook to gamble for purposes of gain. Therefore it was, to a considerable extent, put upon the speediest method of transmission, regardless of the cost of transportation. I submitted the ideas which have been impressed upon the Committee on Canals with regard to this matter, and asked him his views. I believe him to be a man of eminent ability, a man who, so far as his knowledge of these matters is concerned, is second to no other man (outside it may be of those who are immediately engaged in operations upon the canal) within the limits of the State. He told me he believed that unless something was done to facilitate the passage of boats through the line of the Erie canal, to increase the cargo capacity of the boats and see to it, that by that operation there should be cheapened to the consumer of the products of the West the transportation thereof, we must sooner or later lose, not only largely to the canal but to the great city of New York, this vast internal trade of the country. He spoke about, as I did yesterday, that great movement of grain going down the Mississippi river; he spoke also about the fact that the West were determined to hew their way through that barrier of Niagara Falls and find an open way to the ocean by means of the St. Lawrence river. He told me that the people of the State of New York must be careful and wise to see to it or we should lose this great trade which has been the great and crowning glory in the past history of the State. In this connection permit me to say a few words in answer to the gentleman from Orleans [Mr. Church] upon another point—that is this: I understood him to say that the people of the State of New York had the right to stand in the gap and say to the people of these United States of America, "Thus far shalt thou go, and no farther;" and that if they undertake to hew their way through the Falls of Niagara it needed but the simple "No" of the people of the State of New York to stop them in their onward progress. While doubting the policy, even if we had the right to do this thing; even if we cannot by other means give cheaper means of transit to the people of the West, in pursuing their way of traffic across to the East, I still believe the gentleman from Orleans has made a great and grave mistake. I will stand up with him for the honor, for the dignity and for the integrity of the great State of New York, shoulder to shoulder, in all legitimate ways. But I have learned by the sad past few years, that the narrow, contracted doctrine of State rights standing up against the great wants of the entire people of this country is a barrier which, whenever the necessity comes, will go down with the wind of necessity as though it were a mere bag of feathers. Already in the Congress of your United States of America, at two sessions in the lower house, they have passed an act by means of which they would have incorporated a private company for the building of a canal around the Falls of Niagara. They have put it upon a ground which is entirely tenable if true (and who by any possibility can gainsay its truth when it

shall have been impressed upon the statute). I have very serious doubts myself whether it would be available, as a military necessity, in time of war with an immediately contiguous government. But no matter for that; the bill bears upon its face—and it is again to be urged upon Congress in the coming session—the bill bears upon its face that the United States of America give power to do and perform the work upon the ground that it is a great military necessity. And so sure as the people of the State of New York shall falter or hesitate in meeting the just demands of the commerce of the West at this time and at this hour, we will have fastened upon us by an act of the Congress of the United States of America, under the guise of military necessity, this great work around the Falls of Niagara. I have but to mention the fact to show gentlemen that with the knowledge, enterprise and determination on the part of the West, joined with the money of Great Britain, that highway will be quite clear to the ocean, and then, instead of taking the lion's share, within the limits of this State, and carrying it down to our great commercial metropolis, we will have to take up with a beggarly account of empty boxes.

Mr. HATCH—I wish to mention the fact that there are three proposition of North-western Senators before the Senate of the United States now, to build three great freight railroads to the West, on the ground of commercial necessity.

Mr. CHURCH—Not "military necessity?"

Mr. HATCH—Upon the ground of commercial necessity and military necessity.

Mr. ALVORD—I will say, in addition to what I have already said, that in the Senate of the United States, this question of a Niagara ship canal was most ably and eloquently advocated, while the ideas of the other side in opposition were also ably set forth. But with all the ability, with all the eloquence, with all the power of the Senators of the State of New York, and with all the weight and aid that they could gain to their side of the question, they only tided over the difficulty by the assurance that so far as it regarded the State of New York, she was taking the incipient steps toward making her great highway of commerce still better adapted to the growing wants of the West, and thus doing away with the necessity for this immense work that I have spoken about—the building of the Niagara ship canal. Now, before I go into the question of capacity, before I look at and examine this matter in its details, permit me to ask the gentlemen of this committee to reflect for a single instant and see to it—even supposing, as our idea, that the absolute time of necessity has not yet arrived, and that we can possibly for a few years longer get along with the present canal, and pass through them a tonnage somewhat increased beyond that of the past years, that we have behind us a jealous people, anxious to find a breathing-hole for themselves and their property through to the sea frontier, anxious to get for themselves and their property an outlet to the marts of the world, pressing with the indomitable energy which they have shown in pressing themselves out from civilization upon those wide and extended prairies to build themselves a home and habitation. Their

energy has not yet died out. They are determined and resolute men. When this war began which almost disrupted this country, and came very near dividing it into ten thousand pieces, the stalwart men of the West, born of the loins of the people of the East stood up and demanded their rights. And when they undertook to shut the mouth of the Mississippi river, which was one of the great avenues of trade, at St. Phillips and at Port Jackson, the cannon reverberated and again at Vicksburg and Port Hudson, and showed to the people of the South that these men of the West were determined that their limits were not to be bound by any cords, whether they were physical or whether they were those political cords which restrained their rights to the enjoyment of all the avenues of trade throughout the entire extent of the United States of America. Therefore, I say it is wise for us, as a committee and a Convention, to look to it and see whether this energy, this indomitableness, this determination, to issue out of their fastnesses will not drive these men, although it may not be absolutely necessary at present, into some direction other than through our State because of our so-called obstinacy in not meeting their wishes in this regard. Another thing, the gentleman from Orleans undertakes to tell us that if a true financial policy had obtained, these canals would have been finished and would have been done for the benefit and advantage of the State long ago and without indebtedness, and with nearly all the revenues proceeding from the canals themselves to perform the work. I will tell him another chapter in the history of the State. I will tell him that the mistaken policy of 1842, 1843, 1844, 1845 and 1846, kept away from the people, the full enjoyment of the rich blessings that would have come to them from the enlargement of the canals in the great and growing business of the West, and kept them from it until the year 1862. That blind policy has not yet permitted the canals of this State to be finished according to their original intention. They have gone along, snail-like from one point to the other, treading as if upon eggs in the building of these works of internal improvement. It was not until late in 1859 that the western end of the Erie canal in this State was capable of receiving upon its bosom and floating successfully a burden of over one hundred and fifty tons. Sir, I charge another thing. That there was a party in the State as late as 1858 or '59, the same party who had made this rigid, lame and blind policy which had so disgusted the people of this State and which was so injurious in its operation upon the interests of the canals of this State, which really believed the time had come for them to play the game that had been played in the State of Pennsylvania, that the time had come for them with an aggregation of capital to take out those great arteries from the power and control of the people of the State, and bind it, a mere slave and tool, to the capital of railroad monopolies, at the wheel of the railroad car. But, sir, thanks to the determination of the people of the State, and thanks to the fact that, there stood up in this Legislature, in both the years 1858 and '59, men who could not be bought, who could not be driven from the standpoint that the great State of New York

should own and improve her own canals, they failed, and then the Legislature reluctantly and slowly went to work and put into the hands of the persons having charge of the canals the necessary money to complete the western end. And after having called a canal finished for eight or ten years, they for the first time have carried it down to the bottom originally intended for the level, stretching from Black Rock on one side almost down to Lockport on the other. But, sir, they have left it in its original position, where collects the entire trade of the canals pouring in from all the laterals, swelling the tide of the volume of trade as it comes down from Lake Erie. Here at this point for a distance of sixty-nine miles, we have, instead of a canal fifty-two feet wide on the bottom and seventy feet wide on the top, as it was originally contemplated, and as it is now in all the other parts of the canal, we have it forty-two feet wide at the bottom and seventy feet wide at the top, making this end of the funnel, where the entire trade of commerce comes down together, the narrowest part of the entire canal, from one end to the other. In this connection permit me to say that the estimate of the Canal Committee includes this as a part of the expenses they are to undergo in the enlargement of the canals. It should not be so. It should be, so far as that matter is concerned, a part of the original idea of the canal, to be completed with the money to be obtained for that purpose, and not charged to the idea of additional enlargement in any way possible. Another thing in this connection. There is no sort of question, so far as it regards the supply of water upon the canals in this State, that whether you permit them to remain in their present position, or whether you enlarge their capacity as is contemplated by the Committee on Canals, you will have to procure the same supply of water that is provided for by the article under consideration. Sir, in the early day, when the whole country was covered with forests, the streams came in very equably from the beginning to the end of the season. But, now, as the fields have become cultivated, as the swamps have been dried up by the hand of man, as our villages have become sewered and our towns have been improved, the rain that falls in the spring of the year finds its way within a short twenty-four or thirty-six hours from the point of departure to the ocean with which it is connected by the river into which it discharges itself. The result of this state of things is that it becomes necessary for us to husband the water along the lines of the canals. Meteorological observations in that regard show that, so far as it regards the fall of rain, it is not any different from what it has been in the past, showing that from the facility for an easy drainage of the country under the circumstances in which I have mentioned, that water is not husbanded as it was in the natural reservoirs, but passes rapidly to its destination in the ocean, and, therefore, is not available for the purpose of supplying the canals. That must be obviated in the coming future—no matter what may be the position of the canal so far as regards enlargement—by building artificial reservoirs along the line of the canals and treasuring up this water in the day of its fall against the hour of scarcity. Sir, the long level

of canal, stretching from the city of Syracuse upon the one side to the city of Utica upon the other, a distance of almost sixty miles, is lacking not in water but in adaptation and application of that water at the right points upon its line. The reservoir at De Ruyter, the reservoir at Cazenovia, the reservoir at Erieville, the supply at Cowasselon creek give an abundant supply, but when the water comes down in the neighborhood of Rome and Utica the supplies brought to bear upon it are small and meager, while it may have almost overflowed the banks at the western end in consequence of the vast amount of water in it. But before it arrives at the lower end of the level it fails, and that, too, at the very point at which it should be kept up for the purposes of navigation. Therefore it is a serious discomfort, a serious delay and difficulty to the boatmen upon the canal, even under the present system and in the present shape of the canal. It has been again and again and over again recommended through your canal boards, by your State officers, by your State Engineers, by your resident engineers, by your division engineers that the State should immediately undertake the work of bringing in Fish creek as the means of supplying the canal at the point I have mentioned in order to avoid and get over the difficulty to which I have adverted. That is all we ask. We ask for no further supply of water. We ask only for that supply which is needed as well without this improvement as with it. That amount, the sum of four hundred thousand dollars, added to the amount of the cost of removal of the bench walls I have spoken of, makes two millions of the eight millions of dollars we ask for the improvement of the canals.

Mr. TAPPEN—I would like the gentleman to state whether the Black River canal does not feed the Erie in the vicinity of Rome? I merely ask that for the purpose of information. I have always understood that to be the fact.

Mr. ALVORD—It does to a certain extent feed the Erie, but not sufficiently. The Chenango to a certain extent, is also a feeder of the Erie at that point, but not sufficient for the purpose. In passing along I have overlooked one statement which should have been brought in in the right place, and I will, with the consent and indulgence of the committee, go back to it for a few moments. It was in regard to the comparison of the canal movement with the railway movement. The comparison is based, as I have said, in all cases, upon the actual cost of the movement to the rail and to the owner on the canals. The canal movement in 1866 cost \$10,160,510. This included tolls paid to the people of the State of New York. If moved on the rails of the State, the cost of this very property, as sworn to by the New York Central railroad, would have been \$25,553,215. Now, sinking your canals, so far as it regards their revenue due to them, and your eighteen millions of dollars, paid by taxation for the purpose of improving them, and looking not for a return in dollars into your treasury, then compare the position that the people of the State of New York would occupy with their canals in their possession, against the cost of retaining rail as the means

for the movement of the property of the State, and the saving by the people of the State of New York and the community at large by the operation of the canals as against the sworn cost by rail in the year 1866, and you will find it was \$15,193,164. Let me ask the gentleman, after you shall have got rid of your canals, to look at what it will cost the State in five, ten or fifteen years, if this property is put upon rails. It strikes me it makes but very little difference whether the people pay this large sum in taxation, or pay it in the rates of movement of property, it would still have to be paid, so in this view of the case, looking at it as a benefit to result to the people of the State directly by the movement of their property, can there be a single doubt in regard to the matter? No, sir. My humble opinion is, long, long distant will be the day when the people of the State of New York will get rid of these great regulators of the movement of trade throughout the length and breadth of this State. I saw the gentleman from Orleans [Mr. Church] a few moments ago in the room, and I would desire, if possible, to have the table from which he read, but since he is not here I will endeavor, in a very few words, to answer the position taken by him. I am sorry he is not here, because I have to convict him, not of an intentional, but of a radical mistake.

Mr. E. BROOKS—I observed the table of which the gentleman from Onondaga [Mr. Alvord] is speaking. It was a printed table, and official, as I understood it.

Mr. ALVORD—Well, the gentleman read it wrong.

Mr. SCHOONMAKER—I saw the table, and it was a table giving a statement of the lockages to thirteen different locks.

Mr. ALVORD—As the gentleman is not here I will be as guarded as possible, but I understood him to base his argument upon the information about lockages throughout the State, one, Alexander's lock, three miles west of Schenectady, the condition of which, during three months of the year, he held to be a complete refutation of the advocates of the canal enlargement, from the fact that there was very little evidence of the pressure of trade upon the canal. In making that statement he went on and stated that the lockages at Alexander's lock went from twenty-five thousand in the month of May to various amounts, until they came back to twenty-five thousand in the month of November, going up as high, in some cases, I believe in the year 1864, in August, to the number of 42,000 lockages. I believe I am correct in that statement. Now, I wish to say to him and to this committee, that if the canals of this State are capable of doing this vast amount of business, we have no right to stand up and say a single word upon this floor. If gentlemen made a calculation, they have seen what an enormous volume of business has been done through the line of our canal. Take the 40,000 lockages in the month of August at Alexander's lock. This consisted of 20,000 down lockages, and 20,000 up lockages, the 20,000 up lockages carrying nothing and the 20,000 down lockages being full ones. There are 4,000,000 tons carried in one month—20,000

times 200 carried over these canals in a month. The gentleman's argument gave lockages for months instead of years. The entire lockages for the whole year through the lock three miles west of Schenectady, was 29,882. In 1865 there were 26,637. In 1864 there were 28,742, being 1,200 more in 1866 than there were in 1864, and 3,200 more in 1866 than there were in 1865; so that the argument upon which the gentleman dilated with a great deal of force and power of eloquence, upon which he rang the changes again, and again, and again, and again, in the ears of this committee, was based upon a mis-statement. Not, I grant, that he made it intentionally, but that he made it mistakenly; because, if in the history of the State there could pass through the locks in any one month of the year 10,000 lockages, there will be no necessity whatever for any enlargement. Sir, so far as it regards this question of capacity, I have but a few words to say. It seems to me, however, I have almost entirely answered it by showing upon what false premises the gentleman from Orleans [Mr. Church] bases his argument in regard to this matter, but it may be true, and I think likely it is true that so far as it regards the lockages, they may be very uniform during the months of navigation. But every man who is conversant with the canals—

Mr. CHESEBRO—The table from which the gentleman from Orleans [Mr. Church] read was one procured from the canal office. The point was this, simply to show there were more lockages in the month of August than in the other months of the year. What difference is it whether it was four hundred or four thousand or forty-two thousand in the month of August as compared with the other months of the year? Suppose it was forty-two hundred, the principle is the same.

Mr. ALVORD—I think if the gentleman will remain in his seat he will get an answer as quick as he will otherwise.

Mr. CHESEBRO—I was asking for information.

Mr. ALVORD—I was just entering on that matter. I have no doubt the gentleman in his desire to bring into as bad odor as possible the work of the committee, permitted himself to see through a double lense, and increased the number by adding one or two naughts. But, as I was about saying, any one who is at all conversant with the facts, knows them to be that while there may be somewhat an equal movement of boats upon the locks of the canal, if he will go to the Auditor's office he will satisfy himself beyond all controversy or doubt that the movement of tons is vastly greater in the fall of the year, at the time I mentioned, than in any other of the months of the year. The movement of tons of freight in the latter portion of August, September and October, and for the first twenty days in November was from seventy-five to one hundred per cent more than in the average of the balance of the months of the year. Early in the spring of the year upon the first opening of the canals there is a rush of business to the canals, of lumber, staves and corn which has been held back; it usually continues into the middle of June, and sometimes until the first of July. During July and August the boats on the canals are going to

and fro seeking freight at different points. The boatman, rather than lay up his boat at Syracuse, if he thinks freight can be obtained upon the river sends his boat up and down the river, may be to Elizabethport. A great many of our boats in the summer run down the line of the canal to New York and over to Elizabethport, where the Scranton coal arrives for the purpose of being distributed. They engage for one or two months in the dull season in the transportation of coal to the city of New York. They also come up the river, sometimes come up to our point for the purpose of bringing coal from Seneca Lake, or doing anything else, and carrying salt from us to Oswego and to Buffalo. So that the movement in this season of the year that I spoke of as the dull portion of the year, it is the movement of light boats, not the movement of boats loaded. Every one who knows anything about the canals of this State, anything about the canals of any other State or any country, knows that a loaded boat requires at least twice the time to pass through a lock that an empty, or light, or partially loaded boat requires. So while you could probably pass without any difficulty through the locks upon the canals a light boat once in five or six minutes, making, as a matter of course, from ten to eleven an hour, it would require from eight to ten minutes to pass a loaded boat, and that with all the appliances that you can bring to bear, or that the officers of the State can command, with all the gearing for the purpose of bringing boats into the lock that can by any possibility be devised, whether it is going with the stream or against the stream, one hundred and seventy-five is the utmost limit that can be locked through within twenty-four hours; one hundred and seventy-five boats are all that can be locked through. The reason there are more lockages in the month of August than in any other month is that the boats that have been remaining below at that time hurry up to get the tide of Western trade that is coming in from the lakes on its way to market. It is so much larger in consequence of the fact that there are boats bound upward for the purpose of getting the freight waiting for them at the docks of Buffalo and Oswego. I will state, before I look into the evidence which has been commented upon by the gentleman from Orleans, what I know myself in this regard. I will first state the fact that I am not, and never have been, and never expect to be interested in canal-boats or any warehouses connected with the trade upon the line of the canal, except as a manufacturer and seller of my own salt. The observations that I have made in this regard have been the observations of a man looking for information in regard to the general business of the country, and, sir, I know the fact to be that, for the last three or four years in my neighborhood, in the absence of breaks upon the canal, in the absence of any extraordinary means of detention, boats in passing through my town are in continuous double or treble lines, reaching from the locks, upon the extreme west or just outside of the city to the locks upon the extreme eastern verge of the city, for a distance of three miles, and were detained there in their passage so as to be under the necessity of employing from twelve to twenty-four hours day in and day out, week

in and week out, for weeks in the fall of the year each and every year. It is true that as fast as they come to the lock they have to lay back and hold up, and tie up on the tow-path or the berme side, and wait their turn. The gentleman was not aware of the fact that two or three or four or five boats arriving at a lock altogether, and passing through it in their turn, gives an opportunity for the collection of a crowd of boats to come up, one after the other, until, when these four or five shall have got through, there are twenty, thirty, forty or fifty behind them waiting for an entrance and exit into and out of the lock, and as they go from one lock to the other in flocks, they increase as they come down to this portion of the State. Thus the jam gets to be greater and greater.

Mr. CHURCH—I understand during my absence that the gentleman from Onondaga [Mr. Alvord] stated that I had given a statement of the lockages of one single lock, at twenty, thirty, or forty thousand a month. I made no such statement. I gave the statement of all the locks on the Erie canal, of the lockages of all locks on the Erie canal. The figures which I gave are correct.

Mr. ALVORD—The gentleman said, in so many words, that it was the first lock west of Schenectady, called the Alexander lock.

Mr. CHURCH—I said no such thing.

Mr. ALVORD—I so understood the gentleman, and he was so understood by almost every one.

Mr. CHURCH—I read from the statement showing the lockages of all the locks on the Erie canal.

Mr. ALVORD—Probably the gentleman's statement is correct; I have answered that in what I said a few moments ago. Now, the truth in regard to this matter is as I have stated it, that this tide of business in full loaded boats is crowded into the latter portion of the year from the necessity of the case, and in consequence of that fact there is at times upon the line of the canal, in that business season of the year, a detention varying from two hours up to weeks and those detentions operate upon the interests of the transporter of the property and invite him to seek other channels of transport to the injury and detriment of the canals of the State of New York. Now, we must avoid this if possible. I ask gentlemen to look at the New York Central railroad, the New York and Erie railroad. There are seasons of the year when every single car, no matter what may be its shape, which stands upon wheels upon their rails, are taxed to their utmost capacity in the transportation of property. Then, again, at other seasons of the year you can find them coming down the lines of road from the west going east and reversing again, going from the east to the west, a long and continuous line, and by the rattling as they pass by you in their rapid transit through the country, you know they contain nothing whatever within them. It is the necessity of keeping up this great complement of cars for the time when traffic does press upon them, that they have so great a number of cars to so small amount of business transacted upon their lines at other portions of the year. Why, only day before yesterday I passed a long line of

cars upon the New York Central railroad westward bound, and knowing by my eye-sight, and judging by my ear, knowing from what I have seen and examined for myself, when they were in motion, that those cars carried not five hundred pounds each of freight westward. And so with the canals of the State. Boats traverse your canals, through locks during the dull seasons of the year hither and yon, looking for business wherever they can find it, satisfied with merely paying their daily expenses, or if they cannot do that to pay a moiety or small portion of them. But when the rush of business comes, when the tide of commerce from the West drops down upon the State, then they all hover around your Buffalo and your Oswego, and then they are filled to their utmost capacity; they are all threading their way to the East in almost one continuous line from the time when the traffic commences until the close of navigation. They are pressing against the barriers in their way, seeking for exit to the markets of the world. Now, as was remarked by gentlemen here the other day, I think in a private conversation with myself, in regard to this great and magnificent scheme of railroads and the non-necessity of improving the canals, that there was no necessity whatever for preparing for this great amount of business until the time when it should come upon them; that there could be and there would be in the channels of trade a diversion of this business directly from New York, until it should be wanted for use; that it could be stored in warehouses on Lake Ontario and Lake Erie, while the tide of commerce was coming down from the west, of cereals: that it should be stored there, and so much of it as could be conveniently carried over the canals in the fall, would be so carried. The balance would be stored during the winter, and as spring time should open again to the canals of the State, these storehouses would give up of their abundance to the boats, and so throughout the entire length of the year in equitable portions, taking care not to overtax the canals at any one period of time, and so all of this great trade thus kept back for the convenience of the canals and railroads of the State would be transported to market equitably through the year. Sir, I ask any man in his sober senses whether he believes anything of that kind can ever take place? There is a hurrying of these articles to market at one time because of the plethora which abounds where they are produced. At another time because of the speculations which are going on in regard to them. Whenever the time comes for that demand to exist for them, we cannot control their movement. We can then distribute what we can carry of them over the entire country; but we cannot then hold them back for the convenience of your canals. Sir, they are bound to go to the head of the market with the utmost celerity and dispatch that can possibly be given to them, and therefore it is in vain for us to undertake to argue in regard to the capacity of the canals in this State, upon the ground that we can distribute equitably, during the entire seasons of navigation, the entire business upon the lines of the canals. I grant you, and I grant to the gentleman from Orleans, I grant to the State officers, that

upon the hypothesis that there are two hundred days of navigation in the year, that the locks can be tended so as to pass so many boats to the hour, twenty-four hours in a day, and seven days in a week, that they may do a volume of business they talk about. But I will ask the gentleman from Orleans to sit down, and I believe he is a pretty good mathematician, at least in the common rules of arithmetic, and take this position in regard to the lockages, the hours of the day, and the days of navigation, and say whether he does not arrive at the same conclusion in regard to the capacity of the canal that is arrived at by those figures of the Engineer and the auditor. Sir, I have done it. I have seen the basis upon which they predicate the capacity of the canal, and it is upon the basis that each and every hour of the day, and every day of the week, from the beginning to the end of navigation, the canals can pass so many boats carrying so much tonnage, and then by a multiplication produce the result of the capacity of the canals for carriage. Now, there is no sense in the argument that we can so distribute and so direct the business of the canals in their transportation as has been proposed, and it is a sheer human impossibility to distribute it for the entire time of navigation during the entire year, from one day to the other. Exigencies arising at the time must determine the movement. The harvest of the fall of the year determines the movements largely, and the speculation at other portions of the year determines largely also. Upon these two great causes depend the volume and the time of the movement at one time as counter-distinguished from the other. Therefore, while I grant to these gentlemen that the capacity of the canals of this State, under this idea of distributing equally through the entire year, has not yet been reached; yet, at the same time, I contend that in their arguments they have failed to show that the capacity of the canal has not been practically overtaxed in the past. Now, I propose to bring up some evidence upon this point. I propose, before I get through, to look at the evidence the gentleman from Orleans brought up, and see whether he gave us all of it. I do not impute to the gentleman, by any means, a desire upon his part to do that which is unfair, in this regard. But, sir, lawyers are so much in the habit of looking at their side of the case, and reading their side of the law, that they overlook the other, and the gentleman possibly may have gotten into that habit in this case, and has not looked so critically and carefully into the testimony as he would if he was under different circumstances. I read now from the testimony of Sylvanus G. Chase. The question is put to him:

"Q. Your business for the last fifteen or twenty years has been what? A. It has been the transportation business upon the Erie canal.

"Q. Are you personally familiar with the running of boats on the canal? A. I am.

"Q. For how many years have you been on board of a boat yourself, during the season? A. About eight years I took charge of a boat.

"Q. Which has been the fullest year in your recollection? A. I think 1862.

"Q. Had you boats that year, sir? A. Yes, sir.

"Q. Were you or were you not hindered in

getting through the locks that season? A. There was more or less hindrance; they were a long time making the tip.

"Q. To what do you attribute the increased length of time? A. A large amount of business doing, and the number of boats employed.

"Q. Were there other delays besides getting through the locks? A. Well, there might have been some delays caused by breaks, or something of that kind, which always occur with the canal.

"Q. State to the committee, as nearly as you can, the effect of a detention of six or eight hours that year. A. Where there were so many boats running, should there be a detention of six or eight hours, it would probably create a crowd that would last two or three days at the locks.

"Q. Do you think that a larger business could have been done than was done if there had been twice as many boats? A. I hardly think there would. I don't know as I quite understand the question.

"Q. I propose to get at your views as to how nearly the canal was taxed to its capacity. Do you think if there had been twice as many boats as there were in requisition, and plenty of property to load them, that a larger amount of tonnage would have passed eastward through the canal? A. I do not think there would any.

"Q. Then you think that year the canal was taxed up to its practical capacity, eastward? A. I should judge so. Freight rates ran up very high and boats were in demand.

"Q. Was there much of any delay in getting freight at Buffalo? A. Not any.

"Q. About what is the proportion of property going westward as compared with that coming eastward, in your particular business? A. Well, we never load boats over half.

* * * * *

"Q. What was the time occupied usually in 1862 in passing from Buffalo to this city with your boats—I mean during the season when the pressure was the greatest? A. Well, they were from twelve to fifteen days coming down—say eleven to fifteen.

"Q. What would be the time required in the passage of a boat if there were no detentions? A. Well, they could run right along, if there were no detentions, in eight to ten days.

"Q. Eight and a half, I see, the report averages. A. Well, eight to nine days.

"Q. Were boats delayed as great a length of time as fifteen days without any break? A. Yes, sir.

"Q. No obstruction in navigation? A. Well, there might be a slight one, such as I have mentioned, a stoppage of eight or ten or twelve hours; then boats would be longer coming down.

"Q. But the detention you spoke of arose through the difficulty of getting the boats through the locks? Yes, sir.

"Q. At what point was the greatest detention for that cause? A. I think at Syracuse.

"Q. Was there any other cause than that—the amount of business thrown on the lock? A. I do not know of any others; there seems to be a point where lateral canals come in, and there are more boats there.

"De Witt C. Littlejohn, called as a witness, and being duly sworn, testified:

"Examined by the Chairman:

"Q. You reside in Buffalo? A. I do, sir.

"Q. Formerly in the city of Oswego? A. Yes, sir.

"Q. You have been for how many years, more or less, familiar with the navigation of the canals?

A. About thirty-four or thirty-five years.

"Q. Principally at Oswego? A. Yes, sir.

"Q. You were a forwarder and warehouseman during most of that time? A. Engaged in commerce of the canals and lakes.

"Q. What has been your observation as to the capacity of the locks, the present structures of the canals, to accommodate the business in the pressing season of commerce? A. My experience is, sir, that they are entirely inadequate.

"Q. What is the result of it? A. A great loss of trade to the State and city of New York, and if you will permit me to explain just here, inadequate, for two causes.

"Q. I would like to have you do so without further questions. A. In the first place, in the autumn months, when the farmer desires to sell the products of his farm, they are inadequate to remove the quantities that are offered at the two ports of Buffalo and Oswego; this being the fact this pressure of this property on the way to market enhances the price of transportation, often even doubling it, and that results in this way; lessens the volume of movement of property to the sea-board, the advance in the rate of freight holds back upon the prairies the property which, at a lower rate of freight, would come to market.

"By Mr. Alvord:

"Q. Does not the question of time also enter very largely into the objection? A. Very largely.

"Q. And that time is made longer in consequence of this pressure? A. Yes, sir.

"By the Chairman:

"Q. What delay is ordinarily caused by this insufficiency of the locks so far as you have observed—what amount of delay? A. I should think the length of a trip from Buffalo to New York and return was increased about twenty-five to thirty-three and one-third per cent in time, and it is caused in this way: There are a very large number of boats in the canals, in the summer perhaps half of them are idle; the autumn freights bring the whole number out, and there are as many as can lock consecutively every eight or ten minutes during every hour of the twenty-four. If there be a delay of two hours these boats run upon each other, and accumulate upon a lock, and from that moment for days they keep coming on behind, to use that term, before those preceding shall have locked through, and there is this constant delay, not at one lock but at every lock all the way through."

Joseph Breed was a witness brought upon the stand by the gentleman from Orleans [Mr. Church], a portion of whose testimony he read. I propose to read the balance of it.

"Q. What was your observation in regard to the capacity of the canal for the purpose of moving its freight—say for the last five or six years—the freight that naturally and necessarily comes to it?

A. 1861, 1862 and 1863 there was considerable detention.

"Q. What was that detention owing to? A. There was probably an excess of business in 1862 and 1863 over former years; there was a larger number of small boats; they had not gone out of use as much as now, hence it often increased the number of lockages.

"Q. What was that detention? A. Detention of the locks.

"Q. What did it amount to so far as it regarded the transfer of boats from one level to another through Syracuse? A. Various times detentions of twenty-four hours and forty-eight hours; the canal always would be filled with boats from lock fifty to forty-nine."

As I mentioned a few moments ago, it is my observation for the last five or six years, more in some seasons than in others, but in every season that treble lines of boats are lying for hours or moving with the slowness of a snail along a given point of the canal, between these two locks standing apart from each other about three miles.

"Q. What is your idea as to the capacity of the canal having been reached in 1862 and 1863? Could there have been any more business done upon the canal if you had had an abundance of freight and boats to move it, than was done during that time, the fall of the year? A. Probably not, sir; I don't know but there has been an improvement made since that time which adds 20 per cent to the passage of boats.

"Q. Taking even the improvements you speak of, would there have been an ability to do very much of business more, taking into consideration the freight that lay at Buffalo and Oswego, ready to move? A. I don't think there would, sir; I think there are times when the canal is urged to its full capacity.

"By Mr. Seymour:

"Q. About how long a period is that? A. It depends on the movement of grain and freight.

"Q. Take year and year, about what time? A. It commences about September and keeps on to the close of navigation.

"Q. Do you State that as generally occurring each year, that from the middle of September to the close of navigation there is a pressure upon the canal to which it is not adequate? A. I think that may be so stated, sir, as a general fact; it varies from year to year; it depends often upon the receipts of grain and the prices of grain."

Then follows what the gentleman from Orleans [Mr. Church] read of the testimony yesterday. I take the testimony now of William W. Wright, who has been his lifetime connected with the canals of this State; who occupied the position of canal commissioner for two years. And here I deem it to be my duty, although opposed to him politically, to state that, so far as my observation leads me, I have come to the conclusion, I consider him one of the most eminently sound and conservative men who have been placed in that position in long years in the State of New York. His ability, his fidelity to the interests of the State, and management of the canals in all particulars, are entitled to the highest credit. And as a man of sound judgment, sound discretion and far-sighted

sagacity, I think he has but few equals in reference to this particular matter within the limits of my acquaintance. I will, for the purpose of not forgetting it, hoping at a future time to impress what I have got to say upon the committee, just read a little of another matter that Mr. Wright testifies to. I hold that these charges made by these engineers for engineering and contingencies, are so much money thrown away by the people of this State, and that they should not be allowed in the future as they have been in the past; and this committee, as this Convention, have already done away with the office of chief engineer and surveyor, and I trust that hereafter, whenever it may become necessary in the history of the canals of this State to have any engineering work done, that it will be done as you and I, Mr. Chairman, and other members of this committee have our engineering and surveying work done, hire a party to do the work as an expert for the moment, and when that work shall have been accomplished, pay him for what he has done, discharge him, and let him go his way. Mr. Wright's testimony is as follows:

"Q. Now state in regard to the capacity of the locks as they now are to do the business of the pressing season? A. We had about as much in every month of the year at Syracuse in 1862; I was commissioner at that time.

"Q. Were there at times more than you could do? A. I will tell you the fact in regard to these detentions which Mr. Breed alludes to; this large number of boats was there sometimes, but the men worked at it so energetically and faithfully that the boatmen were satisfied, and I reported that there was no material detention; still, every month in the year at some time you could stand and count from ten to one hundred boats waiting to be locked through.

"Q. Have you thought anything on the question of enlarging the locks, and the advantages and disadvantages connected with it? A. I have, sir.

"Q. What is your opinion as to that? A. My opinion is to make the locks agree with the prism of the canal.

"Q. What would be your opinion as to the extent? A. I should think from twenty-two to twenty-five feet wide, and about double their present length, so that boats could be carried of the capacity of 550 tons; for boats twenty-two feet in width, the present channel would answer, I think; no doubt, except at some few curves, which could be remedied."

Charles B. Stuart, the mere announcement of whose name will be sufficient for my purpose, says, on page 38:

"Q. Is not the fact that for six or eight or ten years back, practically, the capacity of the canal has been taxed very nearly to its utmost, and to its utmost when we have full crops? A. I might answer that question by saying that I believe in 1862 it was taxed beyond its capacity, and that the State lost very largely in tolls in not having more capacity to do the business at that time; and I will state further, that I believe with the large crops the West promises for some time, I think for the next three to five years, they will require twice the capacity for that portion that

would come this way if you had the capacity to bring it, and if you could cheapen the transportation you would have much more."

Now, sir, under a resolution of this Convention, a sub-committee of the Canal Committee went to the city of Syracuse for the purpose of examining practically in reference to this matter as far as they could, and take the testimony in reference to it, of those who could be better enabled than any others to give them correct information in regard to the matter. I will read the conclusion of the report of the subcommittee:

"From the foregoing your committee arrive at the conclusion that the practical capacity of the Erie canal, with the existing locks, to pass property eastward from Lakes Erie and Ontario, to tide-water, may be stated substantially as follows: The canal opens on the average on the first of May, hence the full season for shipment from those places from May 1st to November 16th, is..... 200 days.
Deduct from this the average interruption to the navigation by breaks in the canals before referred to,..... 17

183 days.

Taking 160 lockages as the average daily, one-half east, with average cargo of 200 tons, which is liberal, including lumber, ship stuffs and other light property, and we have a daily tonnage from the lakes east of 16,000 Tons.
—for 183 days is,..... 2,228,000

"But as this would fully occupy the canal with business coming from beyond this State, done with large boats, it is quite apparent that the cribs of timber and the small boats from the lateral canals will reduce the average cargo below 200 tons, and correspondingly reduce the total tonnage which can pass east in a season. Your committee are hence of the opinion that 3,000,000 of tons annually eastward is the full practical capacity of the Erie canal with the present locks; but with the locks proposed and one tier only, they think the capacity will be very largely increased, even by horse power, and fully trebled if the business is done by steam; and that the prism of the canal is well adapted to boats 200 feet long and 23 feet wide, when improved, as is proposed by the Committee on Canals."

They, in performance of their duty, put upon the stand a man by the name of James Clark, who, being called as a witness and being duly sworn, testified:

Examined by Mr. Tappen:

"Q. Where do you reside? A. Syracuse.

"Q. How long have you resided there? A. Twenty-three years last June, most of the time.

"Q. What has been your occupation? A. It has been in the canal business; I have had charge of a station; in the employ of the towing company.

"Q. For how long? A. For twenty-three years; I was away one year out of it, and then came back."

By Mr. Prosser:

"Q. Have you been so situated that from your business you were able to know whether or not there was much obstruction in the navigation of

the canal here? A. Yes, sir; I have seen a good deal of it; I have seen it all.

"Q. During the fullest years of business, more particularly during the war, was there or not much detention of boats here? A. There was, all the time during the season, pretty much all.

"Q. What was the cause of that detention? A. They had more boats than they could lock.

"Q. The inability to go through the locks as fast as they came, was it? A. Yes, sir."

Then, again, in answer to questions put by Mr. Tappen:

"Q. During these full years of business, in the fall, as near as you can estimate, would you say that boats were lying here less or more than half of the time, waiting? A. I think I could say half of the time.

"Q. Half of the time, you think, there was a crowd waiting to get through? A. Yes, sir; I think I could say that.

"Q. During last fall, was there some detention here? A. A very great detention, sir.

"Q. How has it been this season? A. Well, it has been off and on; sometimes there would be a crowd to last ten or twelve hours; sometimes two or three days; during last week and the forepart of this week, there were boats detained nearly all the time.

"Q. That was on account of the difficulty in locking? A. Yes, sir."

James Delamater was called as a witness upon the stand, and sworn, and he testified as follows:

"Q. Where do you reside? I reside in Syracuse.

"Q. What is your occupation? I am a lock-tender now.

"Q. For how many years have you been? A. I have been for seven years.

"Q. At this place? A. Yes, sir, at these locks.

"Q. During the time that you have been here, has there been much detention in boats getting through the locks? A. Well, there has been some little.

"Q. What periods of time the most? A. Well, it probably would be in the fall of the year.

"Q. How was it during the time of the war; were boats generally waiting here, or only occasionally? A. Well, they were waiting here for some little of the time; boats ran pretty freely then.

"Q. What portion of the time during the fall of the years during the war, should you think they were waiting—more than one boat? A. You mean the detention at the locks?

"Q. Yes; when there was more than one boat waiting to get into the locks? A. Well, I should put it at about half the time on an average.

"Q. Do you recollect particularly about the season of 1862—whether that was the largest year of business or not? A. I don't recollect about that.

"Q. Do you keep an account of the boats locking through here? A. Yes, sir.

"Q. Did you send that account to the auditor? A. Yes, sir, every month.

"Q. Those accounts are carefully kept? A. Yes, sir; I have kept them myself this last year.

"Q. During the last year has the business been lighter than during the war? A. Yes, sir.

"Q. Has there been detention? A. Occasionally, but not so much.

"Q. Do you recollect last year any time when there was any material detention here? A. Well, sir, nothing more than the fall.

"Q. What should you think was the longest time when there were boats waiting here steadily for lockage? A. About a week.

"Q. When was that? A. That was in November, I think.

"Q. Have you sent to the auditor of the canal department the number of boats that passed through at this time? A. Yes, sir; I attend to that myself.

"Q. Has there been any change in the size of boats since 1861 or 1863, so they would lock faster or slower? A. I think there has.

"Q. In what regard? A. Well, they have been making them larger, quite a number of them. I could not tell how long.

"Q. Do they lock faster or slower on that account? A. Slower; they fill the lock right up.

"Q. Can you lock a light boat quicker than a loaded boat? A. Yes, sir: much quicker.

"Q. Can they go through faster on the heel-path than on the tow-path? A. They can in these locks.

"Q. How many boats can you lock now, if they come on regularly, night and day? A. I think we can lock about 150 both ways.

"Q. Cannot a larger number be relied upon than that, if they are here all the time, take it night and day? A. I think, myself, if there were more boats, we might lock some few more, but we average, probably, about 100 to 150.

"Q. This morning I timed it precisely for an hour, and we got through just seven boats in the hour. A. Well, that would be a little less than ten minutes to a boat; sometimes we have a fleet of these small boats and we can lock faster; they will run in better than a big boat.

"Q. Bearing in mind what was done this morning, is it your judgment that as much was done in that hour as we can really count upon doing at all? A. I should think there was; boats could not go through much faster than they did.

"By Mr. Bell:

"Q. You think you would not be able to let through more than 160 in the twenty-four hours? A. Well, we might lock through 170.

"Q. That would be the extent? A. Yes, sir.

"By Mr. Prosser:

"Q. I understand you to say the reason you cannot lock as fast now is because the boats are larger. A. Yes, sir, the boats are larger. The water has to run out behind the boat; the boat displaces the water."

In addition thereto this committee report that they had made an accurate observation themselves in the passage of boats through this lock which I speak of, and timed the boats in their passage through the locks. They state that there was plenty of water, and no lack of attention on the part of the boatmen or lock-tenders; both locks were fully employed every instant, and the loaded boats were aided by the use of a fixed purchase,

or pulley, upon the lock, furnished by the lock-tender; this facilitated considerably.

Time boat started to tow into lock.	Name of boat.	Time boat got through so that another could start to tow in.	Time actually employed to pass through the lock.	Cargo.
h. m. s.		h. m. s.	m. s.	
6 11 15	J. Barnes,	6 32 40	21 25	130 M ft. lum.
6 11 40	M. McDonald,	6 31 00	19 20	139 M ft. lum.
6 32 40	J. R. Race,....	6 46 15	13 35	Light boat.
6 33 00	A. W. Sweet....	6 50 10	17 10	135 M ft. lum.
6 46 15	R. N. Owens,	7 10 00	23 45	110 M ft. lum.
6 50 10	A. H. Ladin....	6 59 30	9 20	Light.
6 59 30	Ed. Merry,....	7 13 00	13 30	130 M ft. lum.

Thus seven boats were passed in one hour, equal to 168 in 24 hours.

Now, sir, it does seem to me that from this and from the testimony, if gentlemen will look over this testimony of Mr. McAlpin, in addition to that of Mr. Stewart, and if they will look at the testimony of Mr. Taylor in connection with this matter in reference to the capacity of the canal, which I will not at this time undertake to bring before it, but I will with confidence ask them to look upon the testimony in that regard for themselves. They will see that for all practical purposes in the fall of the year, not only for one, but for a number of years past, the canals of this State, the capacity for lockage has been reached, and in the words of Mr. Stewart, and some other of the witnesses, the capacity has been overtaxed. It is true, sir, that all that floated upon the canals in those years passed through the locks of the canals; but, sir, they passed it through slowly, with pain, with toil, and with great patience upon the part of the operators upon the canal, and with great impatience upon the part of the owners of the property who were sending it through that channel to the market of the country. And in consequence of that fact, of these detentions at these locks, the want of assuredness in regard to the passage of the property through the canal in point of time, large quantities of property which otherwise would have gone through the canals of this State to tide-water, sought the railroads of the State at largely enhanced cost of transportation. And, sir, owing to these detentions, owing to this time thus used up in passing them through the locks of our canals, in consequence of this want of capacity growing out of this great business, that is but yet in its infancy, started upon the shores of the Mississippi river to seek through another channel and in another way an outlet for the great productions of the western country. Sir, if there had been easy facility in the passage of the boats through the canals, of this State, sufficient to have taken care of the entire volume of the trade, not only that did come down, but that would have come down, with those facilities at Buffalo and Oswego, there never would have been any attempt to try this experiment which is now no longer an experiment: The passage of this great matter of the products from

the West down the Mississippi and so across the ocean to market, without paying a tribute to the State of New York and to the commercial emporium of the State and the Union. Sir, another thing in regard to this question of capacity. I desire to say to the gentleman, and I say it not only as my own observation and experience, but I say what I have been borne out in by all of the engineers with whom I have ever conversed on this subject, that a grave and serious mistake was made when this enlargement was first projected in building the locks upon the line of the canal, not at all commensurate to its prism. If we had gone to work in the early day of its enlargement and built a canal some ten or fifteen feet wider on the top, and some twelve or fifteen feet wider on the bottom, and only made it a canal five feet in depth, and then given to it locks with a capacity of two hundred and twenty-five to two hundred and fifty feet in length and twenty-five to twenty-seven feet in width, we should have been enabled to navigate it with vastly more facility than is now had, and should have been enabled to carry upon its bosom in one single craft of 600 tons the amount contemplated by our present improvement to be carried on the incoming improved canals of the State. Why, sir, it is a simple proposition—plain, so that he that runs may read; that wherever you can get great width of beam, great length of vessel and lines so that the waves of the ocean will not disturb the equilibrium of the vessel, you can propel a vessel of that kind and of that build decidedly easier, carrying a greater burden than by any possibility you can do under circumstances of the sharp built, narrow waist, and deep draft of water. Why, sir, your floating palaces of the Hudson river are examples directly at hand for you to look at. Those magnificent palaces carrying their thousand or fifteen hundred passengers, carrying also at the same time down the bosom of the lordly Hudson a thousand or fifteen hundred tons of freight upon each of their voyages. And sir, the Dean Richmond, capacious as she is, with a burden capacity that is almost beyond belief, going from here to the city of New York without any difficulty in seven or eight hours' time, draws less water by a foot than any of the canal-boats, loaded down with 224 tons, that swim upon your internal canals of the State of New York. And she does it because you have given her breadth of beam and given her length of structure enough to bear up on the top of the water, and not to impress deep in the water and compelled by that means to drive away from it the resisting elements—you have enabled her to do this great and immense work, as compared with the canal-boat drawing more water than she does. Sir, so far as regards this matter of capacity in this connection, also permit me to say that, from my own observation, from the concurrent testimony of many others, from the conversation and testimony (I do not know whether it was put in the testimony, but if it was not, it was in the conversation had with honorable Mr. Stewart), from the testimony of my friend and colleague upon the Canal Committee [Mr. Prosser], we have within the limits of these United States of America, to-day, a canal of the depth and capacity of our canal seven feet

in depth, seventy feet wide on the top and only fifty feet wide at the bottom, on which for years there have floated vessels propelled by steam, carrying from 400 to 600 tons burden, and only limited so far as regards their speed to transport through the line of the canal, by the statute of regulation in reference to the use of that canal, to three miles an hour. I speak of the Delaware and Raritan canal. It bears upon its bosom each and every day of the canal navigation, steam vessels propelled by steam, carrying through 500 and 600 tons cargo; large tugs driving through a tow of your canal-boats carrying also their cargo. Why is it? Why, sir, it is because they have got locks commensurate with the prism of their canal. It is because they have taken, they have assumed a right policy in regard to this matter and they have made the coat to fit the object that it was intended to cover. Now, sir, in regard to our canals what are the facts in regard to our locks? Our locks will permit of the passage of a boat ninety-eight feet long and seventeen and one-third feet wide. That is the utmost capacity of the locks. The depth of water is seven feet and the boats are entitled to draw six feet of water. In order to put upon them a load so as to make it available to them to do business upon the canal, they build their boats with express reference to the size of the lock in connection with the draft of water. The bridges are twelve feet above the surface of the canal. They, therefore have to be regulated to a certain extent by the height of the bridges, because there are times, as a matter of course, when they have to pass over canals of the State, light. They go to work and build their boats and have found by examination in regard to the matter, by the practical operation, that they must be a peculiar kind of boat, or else they cannot put upon it the cargo they desire. Neither can they avoid the difficulty when they are light of passing under the bridges upon the line of the canal. It was in 1862 that for the first time the canals were declared to be enlarged. Up to that time there has been no very large amount of the larger class of boats built. Since that time they have been built rapidly. When they first built their large boats they built them with the idea of a capacity for fleetness upon the canals, as well as for carriage; so that the original boats built to work upon the enlarged canals of this State carried from 160 to 175 tons. They were built as they should have been, sharp in the bows, rounded in the stern, and with fine lines upon the sides, calculated to overcome the resistance of the water, the best possible way for celerity of movement. But gradually, anxious and desirous for large cargoes, willing to forego the celerity of movement for the purpose of getting a large amount of freight, and finding the freight pressing upon all the boats that could be got at for all the year to come at Buffalo, they commenced widening out their boats, losing the lines of the sides, making them in fact and in truth wider on the bottom than on the top, taking the curve out of the bow, and bringing it down so that it now almost stands up perpendicular, taking the round out of the stern and building that out also square, so that a present canal boat having a capacity for a burden of eight thousand bushels

of grain, of two hundred and forty tons, is built so that it sits to-day as a log in the water. It fills the entire capacity of the lock, so that it is with difficulty that the water can be got around it rapidly, so as to rapidly lock it from one plane of the canal to the other. And when it moves upon the line of the canal the inertia is simply overcome because, in attempting to get up anything beyond that simple slow snail pace with the shape of the boat, it calls for the exertion of a vast amount more of power than can by any possibility be brought to bear with economy or prudence in the propulsion of the boat. So that practically, owing to this peculiar structure of the boat, their size being commensurate with the prism of the lock and with the depth of the water of the canal, from necessity impressed upon them from that fact, those boats move to-day through the line of our canal at the slow snail pace of a mile and a quarter an hour. If the locks were lengthened to two hundred feet, and the breadth of the boat given to be twenty-three or twenty-four feet, with sharp bow and rounded stern, they would be enabled to bear upon them all that they could with the draft upon the line of the canal. They would not of necessity have to build for the purpose of carriage capacity the perpendicular ends, both stern and bow, that they do now, but that they will be compelled to build a symmetrical vessel, which could be propelled through the channels of this State, in my humble judgment and opinion, with the same motive power that now drives the present boats in their awkward way of being built at a faster rate of speed, and carrying from five hundred to six hundred tons burden each of the boats. But, sir, another thing. Steam has been undertaken to be introduced upon the line of the canal, and some men say that it is a failure. I do not believe that anything that human ingenuity undertakes to do, and which in practice in other regards has been proved to be a success, will eventually be a failure. I believe sir, that even with our present canals, that there is in existence to-day an untried experiment upon the line of the canals, but an invention which has been so far tried as to make it perfectly and entirely clear to my mind that it is to be a triumphant success, that will be put upon the canals of this State by means of which that long line of horses now upon the tow-path will have rest from their weary labors, and be clear from the cruelties of those who have them in charge, and that steam will be harnessed up for the benefit of man and will propel the boats upon the canals of this State for a long time to come.

Mr. TILDEN—Will the gentleman be good enough to state what experiment he alludes to?

Mr. ALVORD—I allude to an experiment that has been tried with what is called the railway tug, in the harbor of the city of New York, within a few short weeks, and that was also tried last fall successfully.

Mr. TILDEN—Is it the boat that lies near the Battery?

Mr. ALVORD—Yes, sir. Why, sir, another reason why steam has proved a failure upon the line of the canal, so far forth as it regards our experiments up to this time, has been that the undertaking to adapt steam to the boat which car-

ried the property resulted in so much displacement of cargo room as to render it a matter of too great expense in the way of economy, as against the movement by horses. When we shall have got, sir, our enlarged locks upon the line of the canal, that which is no longer an experiment upon the Delaware and Raritan canal, will be only the introduction of a well-known matter upon the line of the canals of this State, and we shall find our boats being propelled by a motive power on board of themselves, through the lines of our canals, by the operation of steam. And they will be enabled to go through at the rate of three miles an hour, doing no more damage, nor, in my opinion, so much damage, as the present constructed boat does in its slow motion through the canals of the State of New York. Now, sir, what would be the result of this state of things? The result would be that in the first instance, as your enlarged boats with their increased capacity come rapidly into use, that the number of lockages would, as a matter of necessity, decrease, while the amount of property transported through the line of the canal would largely increase. Your volume of boats would possibly decrease, so far as it regards the present and for some considerable time in the future, for another reason: because of the fact that they would be enabled to transmit property through the canal at more than twice the speed at which it is now transferred from one end of it to the other, and with your boats carrying six hundred tons, and making two round trips where they now make one, you will find by the simple operation of enlarging the locks upon the lines of your canals that you will have made six times the capacity of the present canals, with the present arrangement of boats upon the lines, for the purposes of the business of the future. Now, sir, another reason. The gentleman from Orleans [Mr. Church] while speaking in regard to this matter, said that he would not go into a detailed argument upon the question of expense. He, however, threw out some general observations that he did not believe that by any possibility there would be any great decrease of expense in the transmission of property through the canals upon the plan of the enlarged boats, as compared with those used at present. I will ask that gentleman to look at some of the facts of the past history of the canals of our State. The friends of the enlargement policy, when it was started, went into a hypothetical statement in regard to the results of the future, respecting the cost of the transportation of property. Leaving the tolls as they were in 1846, and taking the cost of labor and the value of the materials at that time as the normal point, engineers and experts in this State drew out a long table and came to the conclusion that whenever the canal should be finished, upon the idea of enlargement then contemplated, there would be a reduction in the cost of transportation of fifty per cent. That was hooted at, mocked and derided upon the floor of this house, and the floor of the other house of the Legislature in this capitol. It was laughed at, and abused from one end of this State to the other in the columns of the newspapers, who opposed the policy of the canal enlargement. What are the facts, Mr. Chairman, what are

the facts, gentlemen of the committee? Taking the normal point that I have spoken of, putting the tolls upon the movement of property as they were in 1846, gentlemen will find that there has been a reduction in the cost of the movement of property upon the line of the canal in consequence of the improvement of that canal, of fifty-one and a half per cent, showing the accuracy of those calculations, showing the sagacity and foresight of these men, who were thus in favor of the canals, and used this as an argument, in the results which have been proved to be facts in the present. I was looking at this matter for a few moments last evening, when I told the committee the reason why there had been a diversion of trade from the Welland canal to Oswego and down the St. Lawrence in favor of Buffalo. Why, sir, it is perfectly susceptible of demonstration so that he who cavils the most will give in, that a boat carrying the burden that I speak of, put upon the canals of this State, and passing through them, through your enlarged locks, carrying a burden of three times the amount which is carried by the canal-boats now in existence, would require only so much of additional help and aid in its propulsion and in its management as would leave room to reduce beyond all possibility of doubt, impressing the same tolls upon property that are now impressed, the cost of carriage to a point thirty-three and one-third per cent below what it costs at the present day. There can be no question in regard to this matter. It is the simple proposition of all time. It has been worked out again and again in a thousand different ways in the various operations of men. Wherever large and extended business is done, within the same capacity of power, so far as it regards motion, as a matter of course the larger amount of business there is done it must be done correspondingly cheaper. And so it is in regard to this matter of the carriage of property upon these large boats; and in making this computation in reference to this result I desire gentlemen of the committee to understand that of all the elements which make up the case on the one side as against the other, have entered into the calculation—the cost of the boat as contradistinguished from the cost of the present boat: the cost of insurance upon the property; the tolls imposed by the State on the twenty thousand bushels that can be carried as against the eight thousand bushels; the extra handling both at Buffalo and Oswego on the one side, and New York city on the other; the commissions, the extra wages of the men and the addition of the men upon the boat, and the addition of horses upon the tow-path to help in the propulsion, whereas your committee believe and I most earnestly and sincerely believe that there will not be that necessity, even with that addition, to use horses. All this enters into the calculation, and this calculation shows, beyond the possibility of a doubt, that, so far as regards the question of cheapening the transportation of property, it would be cheapened thirty-three and one-third per cent below what is now impressed upon property moving upon the lines of the canals of the State.

Mr. TILDEN—Will the gentleman be good enough to state where that calculation can be found in detail?

Mr. ALVORD—My impression in regard to the matter is that the gentleman will find it, in addition to my own statement, in the testimony which was taken by the Canal Committee. I am not entirely sure whether it is in the testimony. I am informed by the gentleman from Ontario [Mr. Lapham] that the gentleman from New York [Mr. Tilden] will find it in the canal report for 1864. I know I have carefully gone through the statement. I have looked over and examined it from beginning to end, and I am entirely satisfied of its correctness and soundness, and I would stake my reputation upon the position which I occupy; and I think I can do it fully as safely as those gentlemen staked their reputation in the past history of the State upon the reduction that would then grow out of the contemplated enlargement. And I say that keeping the tolls upon the line of the canal as they are now, putting this improvement into actual existence and operation, you will reduce the cost of the transportation of property through the State upon the line of the canals 33½ per cent without altering the toll on property going over the canals. Now, sir, do gentlemen for one single moment contemplate what this does? Supposing that, for instance, we had now, all within a given space of territory of the surplus products of a country lying behind us, and that there were no others reaching out their arms for the purpose of getting to themselves a portion of that traffic—no one in competition with us, and that our lines of transportation reached out to the point of which I speak. Why, sir, how are we going to work to swell the volume of our trade except by cheapening our transportation? We have, for instance, on the great lakes of the West an inland coast of over five thousand miles in length, commencing opposite Buffalo on the one side, running along up through Lake Erie and the Detroit and St. Clair rivers into Lake Huron, and up over into Lake Michigan, and down back again upon the opposite shore to the city of Buffalo—over five thousand miles of inland coast upon our great inland seas. Suppose that we are now extending our business one hundred miles in the interior, all along that coast line, by the price which we now charge for the transportation of property throughout our State. It is not because we have reduced it that we get, say, for instance, at Detroit one hundred and twenty miles further in the country, and get that twenty miles, and not only that, but when we get to Chicago and get that twenty miles, but we get one magnificent belt of country, for that reduction will give us twenty miles, or, rather, it will give us a belt reaching the entire length, five thousand miles, and twenty miles in width. This is the result always of cheapening the price of an article, which is in the general estimation and in the general business of the world. It is not simply cheapening it, at a certain point, but it is cheapening it over such a vast extent of country—from one end of the line where you commence drawing in your supplies to the other, that it is almost incomprehensible to the imagination. And another thing: There is a difficulty and trouble always in contending lines, each with the other, growing out of the necessity of being careful in adjusting the cost and the charges for the transportation of

property; and the smallest conceivable amount of money impressed upon the great and vast movement of the country, will throw it either in one direction or in the other. A half a cent—aye, sir, a quarter of a cent a bushel upon corn, as a general, fixed, determined rule, will carry every single kernel of the grain of the entire West away from the State of New York to other channels, to seek the sea-boards of the country. And it is only from the fact, that in the past history of the State we have been enabled to bring the line of transportation in its course so low down that we have been enabled to keep that large volume of trade which is constantly knocking at our doors for admission and transmission through us. And when we shall have again done the work that so well befits us to do, to cheapen again the cost of transportation from the far West to the East, then we may bid, for long years to come, farewell to any idea of competition. Then we can be assured of retaining in our hands, without a rival, all that volume of trade that we desire to give to ourselves and swell it to the utmost magnitude that we are capable of taking care of and conveying with safety and economy through our midst. To show a little of the vast importance of this great movement of the West, I desire to call the attention of the committee for a few moments to a recital of the movement of western trade and the cereals of the West for the past week. The weekly receipts at the lake ports for the week ending August 31st, Chicago, Milwaukee, Toledo, and I will take them all together because it will occupy too much of the time of the committee to read them separately. Chicago, of course, largely exceeds any of those, and probably all of the others. The total receipts of flour at these points for the week ending August 31st, was 108,844 barrels; total receipt of wheat 1,254,000 bushels; corn, 1,016,044 bushels; oats, 117,751 bushels; barley, 114,643 bushels; rye, 101,856 bushels. The previous week, 90,000 barrels of flour, 1,140,000 bushels of wheat, 1,021,000 bushels of corn, 994,000 bushels of oats, 25,000 bushels of barley, and 27,000 bushels of rye. The eastward movement was, from Buffalo, 28,000 barrels of flour, 356,000 bushels of wheat, 725,000 bushels of corn, 746,000 bushels of oats, 52,000 bushels of barley, 60,000 bushels of rye; from Oswego, 94,000 bushels of wheat, 69,000 bushels of corn, 25,000 bushels of oats. The gentlemen can see where the tendency of freight is in consequence of the large size of the vessels navigating the lakes of the West. They can see, also, in this case another thing, that while the city of Oswego received upon Lake Ontario 94,000 bushels of wheat Port Colborne received 51,000 bushels, Toronto 12,000 bushels, Kingston 145,000 bushels, Montreal 35,000 bushels, making about three times the amount in all, received at the canal ports upon Lake Ontario to the amount received at Oswego from the same sources. Then they will see another thing. See where the movement is now, this season of the year, by railroad: 7,000 barrels of flour, 19,000 bushels of wheat, 20,000 bushels of corn, 37,000 bushels of oats, and 10,000 bushels of rye. Sir, the volume of the trade that is coming into this State this fall, owing to a bountiful Pro-

idence, shows that the harvest of this country is unprecedented in the history of the past, and I venture to say before the voice of the speakers in this Convention shall have ceased to be heard in these halls this fall, we shall have from one end of the Erie canal to the other the cry of boatmen going up, "want of capacity in your locks, and want of capacity to do the business that is pressing and bearing down upon us from Buffalo to Oswego, and the enlargement of the locks for the volume that must necessarily come upon us, give us that capacity, give us that enlargement, create for us this canal in all its parts as it should have been created originally in its enlargement, make your locks commensurate with the prism of your canal, and we will give to you celerity of movement, we will give to you dispatch, and we will give to you economy of movement, and instead of 3,305,000 tons that are now reaching tide-water in the movement in the canals of the State, we will add to it another and another three millions of tons very shortly in the history of this State, and of this nation." The gentleman from Orleans [Mr. Church] says that he is a friend of the canals, that he desires that they should be improved, that he trusts that they will be in the future improved; but yet he asks us to delay, that there is no necessity pressing upon us at the present time. He asks us to wait until the time shall come when it may be found necessary to improve the canals, and then he will go with us in that improvement. He asks us to leave it to two Legislatures to pass upon and to go down to the people of this State with a proposition separate and distinct from the present organic law we are making, for the purpose of enabling us in the future to improve the canal. I tell the gentleman from Orleans, while he is thus waiting and watching, he has got his eyes turned away from the actual, absolute and pressing interests of the hour. He has got, in the first place, as I have mentioned, the fears and doubts of the people of the West against the future, so far as this State is concerned in regard to this improvement, in the known want of capacity of the canal to do its business at the present day, in the present hour in which we are speaking; and, sir, he knows another thing. It is true that his head is not so white as mine, but he has come very nearly to the years God has given me upon this earth. He knows both of us were young, stalwart men in the prime of manhood, and but a few short years ago, in our own history, in so far as regards that great teeming West, it was nothing else but one wide, uninhabited prairie, from the shores of Lake Erie out to Detroit—aye, even until you went to the bosom of the lordly Mississippi, upon the west. He knows, in less than twenty years from the time we are speaking, a few hundred, a few thousand men, have grown into a people of twelve millions or over. He knows, where there was not impressed upon the soil by the labor of man sufficient to develop enough of sustenance therefrom to take care of the wants of the people, that to-day, this year, and this hour, there will be in that country over 500,000,000 bushels of grain more than are wanted for the interests of our people, that will seek some point where it can sustain

and support other portions of the world's people, and he knows that it is marching on, not with a slow step, with a cautious tread, but with a rush of the mighty wind, toward its destination. He knows that we cannot too soon commence a work of this importance, so far as we are concerned, or we will hardly keep pace with the growing wants of this great and vast flood of property seeking for a market. Why, within the limits of these prairies almost illimitable, upon those magnificent fields which nature has rendered so easily and quickly adapted to the process of cultivation, there grows up each and every year, the production of cultivable, arable land, and cultivated also sufficient to tax the utmost capacity of itself alone of the entire of the original Erie canal if it was built as originally intended, with all the force and power it had in its palmiest days for the purpose of transportation. I tell you, sir, that the future in regard to this matter has not yet begun, but that it is making itself with the rapidity of lightning. We cannot stand here, we cannot pause here and wait, and wait for the time to come, when we may, in the language of the gentleman from Orleans [Mr. Church], be cleared of debt, and have the means growing out of the revenues of our canals for the purpose of improving them. When that time shall come—when in the course of some eleven or twelve years as the gentleman says, or even longer than that, according to his own calculations, by some three or four years—in the course of eleven years we shall find that the time will have gone by forever; that these people will have looked out for themselves other ways of approaching the sea-board, other means of transportation, so as to render it not only, so far as we are concerned, a useless work, but a work which the people of this State, broken, and burdened, and used up as they will be by this policy upon the part of the gentleman from Orleans and those who support him, will be wholly unable to do. The gentleman from Orleans, in regard to this matter, speaks, and taxes the Committee on Canals with a desire to disregard the plighted faith of the people of the State of New York, with a disregard of those great and high duties which they are called upon to perform as the representatives of the people, standing up for the honor and the credit of the people of the State of New York. Sir, that gentleman, nor any other gentleman in this assembly, will stand firmer or stronger than I to keep untarnished the bright escutcheon of my native State. I am not in favor of any repudiation. I am not in favor of doing away with the plighted faith of the people of this State in the least possible regard. I hold it to be the bounden duty of the people of this great State of New York to pay to the uttermost farthing, and with the utmost scrupulousness, the last dollar of its indebtedness, no matter from what sources or under what circumstances it has become indebted to its people or to others. I hold that the proposition upon the part of the Committee on Canals is no such—

Mr. BARTO—Are you in favor of paying the debt contracted prior to 1860, and to paying the interest on the debt in coin?

Mr. ALVORD—If I find time in the course of

the remarks which I am about to make upon this matter to answer that particular question of the gentleman I will do so, but at present I hope he will forgive me if I go on with my argument. Now, in what way, in what manner do we propose to violate the plighted faith of the State of New York. Does not the Canal Committee in express terms pledge the funds of the State of New York and the faith and property of the State of New York to pay to the public creditors the money that is due, or which shall become due to them? Does the gentleman from Orleans [Mr. Church] think he can make a man, who thinks and feels for himself, believe that the great State of New York, with all the power of her great wealth, is violating the public faith when by possibility she may earn \$2,000,000 of dollars this year, and that instead of paying that away and locking it up in the coffers of the State and letting it rust away there, or in some of the banks of the State at two, three or four per cent interest, and thus let it slowly accumulate while the State is paying six or seven per cent interest on her canals until the time shall come to pay their public creditors rather than take it and use it in increasing the means by which it will pay this indebtedness when the time comes? Is that a violation of the plighted faith of the State? Sir, it does not appear to me in that light; it looks to me in the light, so far as this matter is concerned, that the position which has been taken by the Committee on Canals is correct in the way of making more assured, more certain, more reliable, without resorting to taxation upon the people of this State, the payment of the debts owing to the public creditor according to the terms of the contract. "Disregard the plighted faith of the State;" and in disregard of the plighted faith of the State the gentlemen bring in a great many things in these \$5,600,000 of debt which is called the general fund debt. Now, I contend, so far as that debt is concerned, as a matter of fact, that if the State had undertaken to assign to the public creditors what they call the general fund debt for the payment of their debts, they never did promise these public creditors in any way, shape, or manner that it should be paid out of the revenues of the canals. That general fund debt in its terms, and in fact is nothing more than the debt of one part of the State to the other. It is the result of the allowance by the people of the State to the canals prior to 1846. And if gentlemen will take the trouble to go to the debates had upon the occasion of the Constitutional Convention of 1846, they will see that it is made up of the advances by the people of the State of New York for the purpose of the canals, after deducting what the canals had paid them. It is the salt tax, the steamboat tax, it is the property tax upon the line of the canal, for twenty-five miles each side of it, from one end of the canal to the other. It is the payment of another thing. Lands were given by the people of the western part of the State in 1814 to the State of New York, for the purpose of aiding in the building of the Erie canal. They were sold by the people of the State of New York, and the money paid into the public treasury, and when paid out for the benefit of the canals, it was charged to the canals by the

State of New York, as part and parcel of the moneys given by the State for the purpose of building the canals in the State. That is how it is made up. The salt duty, for instance. How were the taxes in regard to that? Prior to the commencement of the canal in 1817 the salt duty in the State was three cents a bushel. For that three cents a bushel the State gave to the manufacturer a five acre pasture lot, a fifteen acre marsh lot, a place for his house, for his store, for his salt works, and a right to go upon ten miles square belonging to the State and cut wood *ad libitum* for the purposes of manufacturing salt, and in addition thereto storehouses upon the bank of the creek where, from time to time, he might as in a bonded warehouse, leave the result of his labor until the opening of the spring should come, and then put it into boats and carry it to market. For all this he paid the State three cents a bushel. The people of the entire West were the ones mainly, outside of the limits of the State of New York, who used the products of the salt manufactures of that locality, and they were willing to do all they could to aid this great work, and have it accomplished. And so, with the entire approbation and consent of the people of that locality, through their representatives upon this floor in 1817, and as the initiative forming some of the fund by which this canal could be built, they agreed to put duties upon salt to twelve and a half cents a bushels, and when the Constitutional Convention of 1821 met they put it into the Constitution that those duties should remain at twelve and a half cents a bushel so long as there should be any indebtedness upon the Erie or Champlain canals for their construction. But in 1836, it having been determined beyond any doubt, that the original indebtedness had been entirely paid, or that the money was on hand for the purpose of paying it, they reduced that duty to six cents, and afterward, in 1846, to one cent. But that was done for the purpose of creating a fund to pay for the construction of the Erie and Champlain canal. The great amount of the money which was thus obtained from that tax upon salt was not paid by the people of the State of New York; it, of course, was not paid by the manufacturers of salt, except in the first instance; it was added to the cost value of the article as it was carried into Ohio, into Pennsylvania, into Michigan, and upon the shores of Lake Michigan, at points that were then open for commerce. It was paid for at the expense of the people of the West; they paid this nine and one-half cents difference on the value of a bushel of salt for the purpose of building your original Erie and Champlain canals. That amount was almost three millions of dollars. Now, the auction duty was between two and three millions; \$300,000 was the value of the land which was given to the State and sold for canal purposes. The money was paid into the treasury of the State, and then charged to the canal, and these together making up these five millions and six hundred thousand dollars.

Mr. MURPHY—What was the land sold for?

Mr. ALVORD—For some \$300,000 and odd, and all that goes to make up the sum of five million

six hundred thousand dollars. I wish to say to the gentleman from Orleans and to the committee that there is not one single semblance of right, nor is there any attempt to show a semblance of right on the part of those who did that work in 1846; and they will in vain endeavor to find it in the means by which there was placed upon the canals the annual sum of two hundred thousand dollars to be paid for the support of the government in addition to the payment of these five million six hundred thousand dollars. It was under no pretense whatever, in any way you may look at it. All that the State has advanced to the canals of this State has been settled for, dollar for dollar, except the five million six hundred thousand dollars that were added to the general fund debt at the time of the Constitutional Convention of 1846, so that, so far as regards that two hundred thousand dollars, it has been paid each and every year with the exception of some five or six years, and amounting in all in gross, the principal sum, without interest, to twenty-five hundred thousand dollars, has been a bonus paid by the canals of this State to the State, for which, up to the time when they commenced paying it, they never received one single dollar of advantage. Then if you will go to work and make a calculation, and put upon this two hundred thousand dollars a year the interest which the State has charged to the canal in making up their financial statements in coming to their financial result, and give it credit each and every time it has been received for the purpose of stopping the payment of interest upon charges against us, the result will be that if the difference between the actual interest on the five million six hundred thousand dollars and the three hundred and fifty thousand dollars which has been paid each and every year, as by way of interest on that five million six hundred thousand, a large amount in excess of the interest if paid by the State, and take those two sums from these eighteen millions of dollars which the gentleman from Orleans claims the canals have had from the State since 1846, and you reduce it to below six millions of dollars. Now, if we are going to have a fair statement here, if the canals of the State are to be considered outside of the State, and not the property of the State, but as an incubus, a millstone hanging around the neck of the State—let us, for Heaven's sake, have a fair position on this question; let us look at this thing in the light it should be looked at—if men have made up their minds to divest themselves of any interest in the canals, except as a matter, so far as the canals are concerned, to be got rid of. But another thing. If gentleman are going to make a calculation based upon the fact that they own the property, and that it is a part and parcel of their goods, which they have and which they have been dealing in from time to time since their first history, there is another and a fairer way to look at this whole matter. It should be that as from time to time there came a necessity for the expenditure of money for the purpose of building up the canals, they should have been charged with those advances to the canals at a fair and equitable rate instead of being charged against them, as from time to time the canal shall have paid them back to the State. From the

hour and the day they paid the money they should have been either allowed to take off from the incubus which rested upon them, so much of the principal or they should have had running alongside of that some fair and equitable rate of interest. Gentlemen will find compiled in the back part of the Manual a statement based upon that fair proposition, charging the canals with all they have had from the State, charging them seven per cent interest for the use of the money and giving credit to the canals for all the money that has been paid by the canals to the State from the moment the money has been paid, giving them seven per cent interest, and the result shows that even with the incubus of the lateral canals upon the back of the other canals, in reality and in truth to-day the canals of this State, upon that statement and keeping the accounts in that way, owe the State of New York less than eight millions of dollars.

Mr. MURPHY—What becomes of the difference.

Mr. ALVORD—I cannot tell the gentleman. In the first instance so far as regards this matter of the canals, they never have been credited with any interest. They are deprived in the first place of the payment of interest in our local banks as the tolls are collected from time to time, every year until after certain notice has been given; then they are under two, three or four per cent interest; and they are transferred, maybe, to the local banks of this State where they get from three to four per cent interest. Being transferred from one point to the other they must lose the time and lose the interest, and they are in that way, while the interest is constantly accruing against them, and it is brought to their charge each and every year the vast amount of interest lost in this transfer, and by holding it in bank, collecting and all that sort of thing, without allowing for the time when they were received. Now, what is this eighteen millions of dollars? I will ask the gentleman from Orleans, I will ask the members of this committee to point me where these eighteen millions of dollars have been devoted, or any portion of it, to the improvement of the great channels which we propose by our present improvements. I ask him to at least acknowledge to the members of this committee that upon a fair statement, so far as regards this work which is proposed, on the part of the Committee on Canals, whether or no they do not stand to-day the creditors of the State of New York instead of debtors; whether they do not stand, not in small sums, not in hundreds of thousands of dollars (but wrongfully charging them in the way they have been charged, and giving them credit in the way and they have been credited, not in my opinion in the way which was just) the creditors of the State by twenty-three millions of dollars? Now, I tell you if you do not improve these means of navigation, if you do not go to work and improve that portion of your canals, that have held up your laterals, that have supported them in the past, and that will take care of them in the future, you will have killed the goose that laid the golden egg. If this was a plan for the purpose of enlarging the Genesee Valley canal, the Chemung canal, the Crooked Lake canal, the Black River canal, why

then gentlemen could get up here and say with a great deal of fervor, zeal and honesty, that it was against the interest of the people of the State to do any such foolish thing. For these canals, in the aggregate, cost vastly beyond anything they will ever return to the people, and so far as regards their future, they can never be looked upon as remunerative canals to the people of the State, in the way of dollars and cents or by way of revenue; and there is no necessity, from the volume of business transacted upon their line, that they should be thus enlarged. But it is far different with these canals, which are the canals which have done all the work and paid all the money, and that stand to-day, so far as they themselves are concerned, entirely free of debt, creditors of the State, in their transactions with the people of the State of New York. Now, I desire to say in this connection that I am, unlike some others only willing to look at these great measures in the simple light of an individual going into business for the purpose of creating to himself a fortune, and expecting to have returned to him, in dollars and cents the profits of his adventure. There are other and greater ideas entering into this matter. There are the ideas of the cheapening of transportation to the people of this State, who are part and parcel of the State. If you do not return to them the dollar on their canal investments, you return it to them in the cheapening of the transportation of the article which they send to market. In creating a greater amount of wealth on which to impress taxation, you return to them, in a thousand different ways, vastly more than it costs you in the aggregate to introduce and support these great works of internal improvement. And I am one of those who believe that the State never did a wiser, never did a better thing than when she gave her money freely for the purpose of opening up through the southern tier this great work of internal improvement, reaching from this city to Binghamton—that it will be returned to her four-fold, aye, more than that, in the increased value of property that lies along the line of the improvement, in the increased facility of transportation, and the consequent decrease of its cost to the people along that line. So with your great lateral canals of this State, although they do not return to your treasury sufficient to keep them in existence and maintain them, yet, under the system, as one of the great network of canals, each and every of which is beneficial to its locality, and are paying in the increased value of property along their borders, from the fact of their being within their neighborhood, paying, in the comfort of their localities, vastly more than the cost to the people of the State. And in that view, looking at it in that light, I am in favor of maintaining them still in the future as they have been maintained in the past. But in order to be enabled to maintain them, in order to pursue this policy, in order to be enabled to keep them in the future as we have kept them in the past, the great regulators of the commerce of the State throughout its length and breadth, give to us the means of putting into active operation all of the energies and capacities of those great arteries of the Erie, the Oswego, the Champlain, the Cayuga and Seneca canals, which

gives the very life blood to the people, which is to enable them to go on in the march in which they have so far progressed. I wish to say another thing. It is said that we owe eighteen millions of dollars, with interest added to the original sum, for the advance of moneys to the canal since 1846. I think that I have demonstrated that we do not owe so much by at least eleven or twelve millions; but let that be as it may, go with me, gentlemen of the committee, and look at your assessment roll of the State of New York Look over it from the time of the completion of the Erie, the Champlain, and the other canals of this State, and take the position which those canal counties occupy now, as compared with other counties of the State. Look at the results from that time until now, and see where the percentage of gain has been in population and in wealth in this State, and find for yourselves another thing (for I have done it, long and laboriously, and I can show gentlemen the tables, if they desire it, at my room; they were too extensive to bring here at this time): these canal counties have paid toward the government of New York adding thereto one-quarter of the increase of your great commercial emporium of New York, as derivable from the counties of this State, to the amount of only one-quarter of it, and leaving the other entire three-quarters out of consideration; and they have paid to you, in the taxes which have been paid by the people of this State since 1846, over fifteen millions of dollars in the advance of their ratio of increase as compared with other counties of the State. So they will continue to do in the future as they have done in the past; and we therefore say that, even charging us with the entire of this amount of eighteen millions of dollars, which the gentleman from Orleans [Mr. Church] would impress upon the Constitution—one of the things that the plighted faith of the State was given to pay—even giving us that in that shape, they have absolutely and actually paid back again the bounty of the State to us, increased our means to pay the taxes of the State, and consequently increased the volume of the taxation we have paid into the coffers of the State. Another thing, sir. I hold that the general fund debt is not one of the debts due to the public creditor, but it is a debt due by the people of the State to the people of the State. I hold that these eighteen millions, left even as it is, is not a debt due by the people of the State to the public creditor. It is a debt due by the people of the State to the people of the State, and, therefore, for that reason, it is not such a debt as should come into the consideration of great need and wanted necessity, as at the present time.

Mr. CHURCH—Will the gentleman allow me to ask him a question?

Mr. ALVORD—Certainly.

Mr. CHURCH—Whether the bonds of the State are not outstanding for every dollar of this general fund debt to-day?

Mr. ALVORD—The general fund debt, as originally in existence in 1846, was an indebtedness of the people of the State to the people of the State. The people of the State have, in their beneficence, in the past history of the State, given their bonds to the New York and Erie railroad

to the extent of three millions of dollars, and taken a lien on the road for payment; they have given their bonds for divers and sundry other things along in the south-western portion of this State. They have given their bonds to John Jacob Astor for the purpose of perfecting a defective title of lands down on the North river, and for the purpose of replenishing the treasury and getting rid of the necessity of paying these bonds out of taxation, in their own words and in their own language, by an act of the former Constitution, called this general fund debt, as having been invested in those outside bonds of the State, given for other purposes than those of the canal debt; so that now the holders of this general fund debt, as it originally was held the indebtedness of the State for the three million loan to the New York and Erie railroad, \$500,000 for the purpose of buying the title to the Astor lien, and for, probably, other investments in railroads of this State by way of loaning their credit for the purpose of these roads. In that view, and looking at it in that light, of the history, so far as regards the general fund debt of the State, it is in the hands of the creditors of the State. But the general fund debt, as I said, in 1846, was nothing more nor less than the simple payment, on the part of the State, of the indebtedness of the canals, and should never have been, under the peculiar circumstances with which it was gotten up, by the auction and salt duties and from the sale of land alone it should never, in my opinion, have been made a part and parcel of the indebtedness of the canals; but, so far as regards this \$200,000, that is out of whole cloth entirely, and was a simple bonus wrung out of the canals for the benefit of the State in the future, without the canals ever having received one single dollar in any way, shape, or manner from the State as a prerequisite for such payment.

Mr. CONGER—Is not the gentleman aware that the sum of \$200,000 per annum, for the support of the government, was released for eight years under the last constitutional provision?

Mr. ALVORD—I understand so, and have so stated.

Mr. CONGER—Then how can you make out the sum total they have paid to be two millions and a half?

Mr. ALVORD—I think I can. I may be mistaken in regard to that. I endeavor to be correct. The Comptroller says, commencing in 1846, that \$400,000 was paid the first year, running down to 1866, which is the point in question, \$2,551,138.40. So I think I am correct.

Mr. CONGER—There was \$400,000 paid in 1846, by the Comptroller's book.

Mr. ALVORD—There was \$400,000 paid in 1846, as will be seen from page 50 of the second volume of the Manual, "1846, \$400 000." So I am correct in that statement, as I thought so at the time I made it; though I did not know but what, in the hurry and confusion, and having so many data and statistics, I might have been mistaken. The proposition of the Committee on Canals is neither to repudiate this \$5,600,000 nor this \$18,000,000, or whatever it may be, which has thus been advanced by the State to the canals. It is proposed to reimburse the State, not at 5 per

cent interest, but at current rates of interest, whatever they may be at the time, when we shall thus be enabled to reimburse the State for its advances. This is what the Canal Committee propose to do: to reimburse the State at current rates of interest, whether they are five, or six or seven per cent, as the case may be, at the time when the canal shall be enabled to pay them. Another thing, sir. The gentleman from Orleans [Mr. Church] dwells very largely upon the estimated cost made by the engineers for this work of improvement, which he says we put down at \$8,000,000. Sir, the gentleman from Orleans [Mr. Church] knows that there was in contemplation, so far as it regarded these estimates, an entirely different state of things, with reference to the enlargement, from anything that has been proposed by this committee. If he will examine, sir, carefully and critically, the data upon which that calculation of \$12,000,000 or \$13,000,000 was based, he will find that it was upon the idea of largely departing from the present prism of the canals, in very many instances—not disturbing any of the present locks, but building out of entirely new material, and outside of the prism of the present canal, the enlarged or gunboat lock, and bringing, by means of large expenditure, the prism of the canal to the mouth of the lock, and also away from the lock as it passes out. He will find another thing; he will find that that was based upon masonry of the most costly kind; all cut stone; all to be done at a time when the prices of work of that kind were the highest possible known to the country. And also, in addition thereto, he will find that one of the items, and a large item (I will not undertake to enter into detail) was for deepening the channel of the canals one foot. It was thought by the naval contractor at Washington, and also by the one at the navy yard at Brooklyn, that even by divesting the gunboats that they were using on the ocean and along the coast, of all their machinery and their furniture, taking them out and separating them from the vessel, the vessel would still be of so large draft—having been built for the purpose of navigating the troublous waters of the ocean—it would be impossible with a seven foot draft to get them through. And therefore, for the purpose of making it what they desired to make it, a gunboat canal, they put in an estimate for deepening the canals one foot, that makes a part and parcel of the expense. Again, sir, the engineers, looking at this difficult matter in the light they have ordinarily viewed work, as work begun for the first time, went on and made their usual calculation for engineering, and put in \$1,000,000 for that purpose, thus again swelling up the amount. We have the testimony of Mr. McAlpine, and I do not believe that there will be, in the estimation of any member of this committee who hears me, a single doubt in regard to the entire reliability of the judgment of that gentleman in reference to all matters of the kind before us. He again and again and again repeated before the committee that his estimate for the building of the hundred locks necessary for the purposes that we contemplate, and in the way which is pro-

posed by our report, on the Cayuga and Seneca, the Erie and the Oswego canals, being one hundred in number, could not be made to cost over \$40,000 a piece. And in answer to a question in regard to the matter—"Sir, would you be willing to take a contract for that price, and give your obligation to the State to do and perform it?" His answer was, "I have never been a contractor on public works, but if I felt it to be my inclination to go into work of that kind, I would be satisfied that I could make more money out of an investment of that kind by way of contract, than I am now, or ever expect to be worth while I am alive upon this earth. I think it can be done for \$35,000. Aye, even less than \$35,000; and I will say, in answer to the committee, that I will bring them the best men in the United States of America, who will gladly and willingly enter into any contract, and put up all the security that may be desired, to do and perform this work for the figures I have sworn it would cost." Along side of him, sir, stood Mr. Wright, who is known to most of the gentlemen of this Convention, and whose name I have mentioned once before in the remarks I have made upon this occasion. He stated in answer to a similar question put to him, "Yes, they can be built for \$40,000 apiece. I will gladly take the contract and give all the security required, with an agreement never to come back to the State for any damages on account of my inability to perform the work within the limits of the contract." Then, Mr. Chas. B. Stuart in answer to a question by Mr. Prosser, in regard to making one lock out of two, goes into a detailed estimate; and Mr. Stuart makes the cost \$40,517. He says that, so far as regards the estimates of the committee, in regard to this matter, they are within bounds in the amount they ask, at the hands of this Convention, to be put into the organic law in reference to this work. Because if you take the figures of the committee, and all they contemplate doing, you will find that it is over a million dollars less than the amount they put into the article—giving room, therefore, so far as that work is concerned, for the matter to go over a million of dollars beyond the amount that we estimated that it would cost, and the amount which it is sworn, so far as regards the testimony of others, that this work can be done for. Now, sir, is that a hypothetical statement, made merely for the sake of entering upon this work? Is it made for the purpose of commencing a great work of public improvement on the part of the people of this State, by those who have become "new converts" or "old stagers" in regard to it, simply in order that the work can be commenced, and then that untold millions thereafter shall be forced out of the people of the State, for finally fulfilling and completing the desires of those who urge this measure before the committee. I say, sir, so far as regards this matter of detail in reference to this question, so far as regards the amount which has been asked for, for the purpose of doing and performing this work, so sure, sir, as I believe in an overruling Providence, so sure as I believe in the accountability of man to Him as well as to his fellow-man, so certain am I that I have the utmost faith and confidence that can be given to mortal man to believe, that,

inside of the figures which we have mentioned, this great work of improvement can be completed and done fully and satisfactorily to the people, and for the benefit of the great commerce of the West and that not one single dollar beyond that amount shall ever be called for from the coffers of the people of this State for the purpose of doing the work contemplated by the committee. The gentleman from Orleans [Mr. Church] undertook to throw a shade over the estimates of the future of the canals as given in the report of the Committee on Canals in regard to this matter. He stated, among other things, that about \$2,900,000 had been the average for the last seven years. That is near enough probably for the purposes of the argument. The gentleman, if he will examine very closely, will find that that is only \$35,000 a year short of \$3,000,000. He then tells you that he has gone to work and put three other years on to the last seven years, as they were, to a certain extent, exceptional years, and thus he makes the result \$2,418,000 a year for the last ten years. That figuring is entirely correct, but the gentleman forgot that in 1858, 1859, 1860, 1861, and 1862 they went back upon the tolls of the State and without increasing the volume of transportation through the canals and decreasing the transportation on the railroads at the same time, and thus lost \$2,600,000, which would have been retained and should have been retained to the people of the State for tolls on property which absolutely passed through the canals, this would bring the average amount for the last few years up to \$2,700,000. I say that, taking the fact that, impressing the normal position of the tolls in 1846 upon the line of the canals from year to year, we find that the result would have been far beyond the calculations of the friends of the canal; and we find that their calculations in regard to the tonnage have been, in every single instance, reached and overcome in the succeeding tide of time, and we can be satisfied that with an immovable toll sheet until this work shall have been done, that without any increase over and beyond the ordinary increase that must necessarily flow from the canals of this State; \$3,000,000 a year is a fair estimate for the next ten years: and that it will be as far below the point, sir, as the estimates originally were below the point which the results of the present have shown to be the fact. So far forth as it regards the tolls in 1866, if we had impressed upon us the toll sheet of 1846 we would have had as I have said once before, almost \$5,000,000 against \$2,800,000, that we have got at the present time. Another thing, sir; one great and grave reason why the amounts paid from time to time into the treasury of the State have been less than the estimate of the friends of the movement upon the canals, has been from the fact of the large increase in the cost of maintenance and repairs of the canals. I am not here at this time to judge either harshly or otherwise of the past acts of the officials upon the canals of this State; but I have a right, so far forth as it helps my argument in this regard, to speak of these things, which are patent and open to all men in reference to the matter. The estimate for each year, in 1846, for the care and maintenance of the canals of this State,

was that it would cost \$600,000 a year to keep them in repair and manage them. That was based, not on the improved canals of the State, but on the canals in the situation they then occupied. The very year in which the estimate was made they overcame that amount between \$70,000 and \$80,000. Taking them in the exceptional years, 1865 and 1866, one year they amounted to some \$1,900,000 and the next year a little over \$1,400,000. Give us the cost of materials and labor that prevailed in 1846, and put that upon the years 1865 and 1866, and you will at once divide the amount of the cost and maintenance and management of the canals for these two years by the figure two. Then go into what is unquestionable and what cannot be doubted or gainsaid, whatever may be said of the plundering upon the line of the canals by its officials or by others, go with me to the fall of 1864 and the spring of 1865 and you will find that in the history of this State, within the memory of the oldest gentleman who now hears me addressing this committee, there never has been a time so disastrous, not only to the canals, but to the other property and interests of the State, in the various localities, in consequence of the enormous floods of water that fell from the heavens during the fall of 1864 and the spring of 1865; and we can safely, and I think, honestly, calculate that so far forth as the expenses of 1865 and 1866 are concerned, that at least twenty per cent of the cost of the care and maintenance of the canals for those two years, is attributable to this interposition of Providence, which could not have been averted by any act of man. But, sir, in addition to all this, the proposition upon the part of the Committee on Canals changes this whole system of management, places it as it should be placed, in responsible hands, giving the power as well as imposing the duty upon one individual to see to it that this whole matter shall be managed as the operations of private individuals are managed, in the transaction of their business. And, sir, I say to the members of this committee, and I say to the people of the State of New York, that they, in the past, have been as much guilty of the trouble and difficulty, and the want of honesty, and everything connected with the canals of this State, as any of those who have been engaged in speculation, defrauding the revenues one way and another. It is because gradually and stealthily, from 1846 to this time, there has been a taking away all power and all responsibility, and diffusing it and scattering it all over in a horde of officers until responsibility fades away as the fabric of a vision. Sir, year after year your canal commissioners have been encroached upon in the exercise of the duties of their office by a slight and apparently unimportant amendment of some section of the appropriation bill. Then, again, year after year, there has been taken from your canal board powers which, as an appellate court, should have remained in them, and they have been divested of it, and it has been put in the board of canal commissioners or in the auditor's department. And when you find yourselves going on with the management of the canals, believing you have been doing right in certain matters, in going to the State Treasurer for the purpose of having it re-

paid, you are met with a statement you have stepped outside of your jurisdiction and province; that you have no right to incur that expenditure; you had no right to pass that resolution; you had no right to do anything except what was absolutely necessary for the benefit of the canals of the State of New York, because, in truth, it belonged to some other branch of the canal department. And there is confusion worse confounded from one end to the other of our entire management and control of the operations of the canals of this State. And until you can divest it from that confusion, until you can clear it from the clouds and darkness that now surround it, so that not even their own officers, who have the matter in charge themselves, know anything about it, and until you can concentrate the power and responsibility in one head and under one management, you may go on in the way you have gone on in the past, each and every year, piling up the revenues of the State by getting tolls upon property, and deplete the treasury of the State by this incomprehensible management on the part of officials acting under incongruous laws of the State. Now, sir, another thing I desire to say. I desire to say that as a matter of economy, a matter of the strictest and strongest economy upon the part of the people of this State, that they are in a situation where they can relieve the burdens of the people of the State best by giving to the people the means to create property for themselves in the future as they have done in the past. Take away from them the means of thus creating property, take away from them the means of thus paying indebtedness which is crowding upon the people of this State, and the burdens will be insupportable and harder than we can bear. But give to us, without taxing the people of the State of New York one single dollar therefor (for I have shown that almost the entire volume of this trade comes from without the State, and is not the product of the people of the State), give them the opportunity of making improvement upon the line of their canals and thus increasing the volume of trade that will flow through it, and you give them means to pay their indebtedness. Give them a basis upon which they can grow more wealth to share the taxation that must fall upon the people of the State of New York. Now, sir, I desire to say a few words in that connection, in reference to the matter of taxation. That matter has been, by the judgment of this Convention, left to the Committee on Finances, of which the honorable gentleman from Orleans [Mr. Church] is the head. I have been, in days that are passed, and I hope to be in the days of the future, standing shoulder to shoulder with that gentleman in his ideas of the matter of the assessment for taxation. And I trust, sir, before the labors of this Convention shall have been completed, that there will come in a report upon that subject from this committee, penned by his able hand and supported by his eloquence upon the floor of this Convention, that will create an entire and complete revolution in that regard in the future history of the people of this State. Sir, the present assessment of our State is a fraud and a lie, impressed upon each and every one of the acts of our board of assessors, and our boards of equalizers of

county and State. The assessments have never yet come nor begun to come to one-quarter, aye, sir, one-sixth part of the value of the property of this State liable to and that should pay taxes. Go with me to your insurance companies, and leave out of view entirely the property that is *in transitu*, and look only to that personal property outside of houses and buildings that to-day is paying to the insurance companies premiums for the purpose of being protected against waste by fire and water, and I will show you over one thousand million of dollars of personal property which is insured in this State, and which is not *in transitu* through the State. Go with me to your assessment rolls and you will find there that with your bank capital, with your insurance company capital all added to the aggregate, you have got less than four hundred and fifty millions of personal property that is taxed within the limits of the State of New York. Aye, sir, and again, you know, and I know, and this committee knows, that that thousand millions of personal property which is insured, and pays a premium for protection, is not a quarter of the actual amount of personal property that is within the limits of the State of New York. Then, sir, go with me again to the rural districts of this State—go with me to my own county (and it is not any worse, if as bad as many of the counties of this State), and what do your assessors of your towns and the assessors of your counties do? The town pulls down the value of the real estate, in the one instance, for the purpose of meeting the pulling down of its neighbor town in value before the board of supervisors. And so, town after town, in my county, where the property to-day would sell without any sort of mistake, each and every acre of it, for farming purposes, at from seventy-five to one hundred and twenty-five dollars the acre, in the board of equalizing it is put down at from eighteen to twenty-four dollars the acre. Raise up this property to what it should be; bring out and expose to the light of day this personal property that lies hidden throughout this State, by the strong arm of the law, and give to the property the valuation that it bears in the market. Do away with this idea of relieving from responsibility, from taxation, by so-called indebtedness, and you will place upon the tax rolls of the people of this State, ten thousand millions of property, instead of the beggarly amount of sixteen hundred millions that you have there to-day. Aye, sir, did you hear the eloquent gentleman from Orleans [Mr. Church] yesterday? I heard him, and I was glad to know that he recognized the fact that there is to-day within the limits of the State of New York, held by its people, other property which they do not owe for, and which belongs to no foreign creditor, a thousand million of dollars of the indebtedness of the people of the United States of America. That all goes to swell the amount—all goes to show that the position which I have taken is entirely true and tenable—that there is within the limits of the State of New York that should be brought to light and impressed by taxation for the benefit of the entire people, over ten thousand millions of dollars against sixteen hundred millions which are upon the

assessment rolls. In reference to this point that the gentleman from Orleans [Mr. Church] undertakes to urge upon us, in regard to the indebtedness of the people of this State—who are they indebted to? Where is that indebtedness? He claims, in the first instance, that the great State of New York owes at least one-fifth of the debt of the United States of America, which was brought upon us by no act of ours, but for the purpose of vindicating the sovereignty of the great people of this entire Union. He claims that one-fifth of the indebtedness belongs to us to pay, and, therefore, that it should make a part and parcel of that amount, which, like an incubus, is weighing down our energies and will go far toward producing bankruptcy of the people of this State. Out of his own mouth will I condemn him. Less than one thousand millions is one-fifth of that debt; and he knows and I know that the people of the State of New York, in their individual capacity hold more of the national debt to-day in their hands, than by any possibility the people of the State of New York, in their aggregate capacity, can ever be called upon to pay. Another thing. He has rolled up to you thousands upon thousands and millions of dollars as the result of the indebtedness of our villages, our towns, our cities and our counties. Who holds that indebtedness? Where is it? Has it gone across the waters? Is it in the pockets of the money-changers of Frankfort-on-the-Main or the Rothschilds and Barings of London? No, sir, it is with the hardy yeomanry of the people of the State of New York. It is in your savings banks. It is in the various places where money seeks investment within the limits of the State of New York. I can tell the gentleman that the county of Onondaga to-day owes—I cannot state the exact amount, but I am entirely sure that I am correct—between six and seven hundred thousand dollars, as the balance of the result of our efforts in the war. I can tell him, sir, that that county of Onondaga owns within its own limits, every single dollar, not only of that indebtedness, but has stretched its hands abroad into other counties of the State, and holds in its hands and the hands of its farmers the indebtedness of other portions of the State, as well as its own. I can tell him that up from Tioga, up from Cortland, down from Wayne, and up from Oneida has come, knocking at the doors of the people in my county, a desire to get held of the indebtedness of my locality, town, city and county, but they have been answered invariably “our own people have taken care of our indebtedness. Why do you not go to your own county, to your cities and villages for the purpose of investing your money?” The answer is “We have done so—we have gathered up the entire indebtedness of our locality, and we have money left yet to invest in the indebtedness of other localities.” So that where a great people owes itself the vast amount of the indebtedness which the gentleman speaks of, it looks to me as if it cannot by any possibility be impressed upon a reflective mind that it is any loss to the community to raise taxes for the purpose of paying that indebtedness. It is within the limits of the State; it passes by the operation of taxation only from one pocket to the other, depleted, as a matter of course, by the expenses

of the collection and transfer. But it is within the limits still of the State; it is not borne from the face of the earth. Where taxation is for the immediate wants of government; where it is for that which perishes, as the sun rises and sets each day, then that taxation is lost to the party who pays it. But where the taxation is for the purpose of increasing the volume of profit so far as it regards the operations of the State or people or where it is simply a transfer of property from the pocket of one of the people to the pocket of another within the limits of the same territory, then it is not a taxation that can, by any possibility, be very much of a scarecrow to any man who reflects upon the subject. Sir, the gentleman from Orleans [Mr. Church] has undertaken to bring in the tariff also, and he makes that a part of the indebtedness of the country.

Mr. CHURCH—I said a part of the taxes of the country.

Mr. ALVORD—Taxes of the country. It, sir, is only another way of doing what we are bound to do, what we cannot avoid doing. It is incidentally for protection, to a large extent, it is true, but it is getting in the easiest possible way from among the people payment of money which they have freely given for the purpose of supporting and sustaining the government of the country. I do not believe that, in his heart of hearts, the gentleman from Orleans [Mr. Church] would have this committee, this community or this people believe that he looks with so much holy horror upon this vast amount of taxation, as he calls it, that is heaped up mountain high, in the course of his remarks on this matter. He forgets that the great amount of this tax that has thus fallen upon the people has been to rescue us, as it were, from the fire of destruction in the past few years of the history of the nation. Aye, sir, I believe that the gentleman from Orleans [Mr. Church] would with me give the last dollar from our pockets—aye, and take off the shoes from our feet, and turn ourselves again into men working, as it were, to keep the very soul and body together, rather than it should not be placed as the last and greatest sacrifice that we can make upon the altar of our country—every single dollar of our possession rather than one simple star should be dimmed in that firmament of glory which floats over us as the flag of the Union. Sir, I trust that no idea like this will obtain in this committee, or in this Convention, that forsooth, because of these taxes that have been brought upon us in this great and glorious work in which we have been engaged, that are now upon us and have got to be met by us by stern, unrelenting courage, and will be met, that therefore we are going to pause and hesitate in the onward march of this State and of the nation. We cannot afford, under all the circumstances, at this juncture, to stop in the way of our progress. The world is moving on—it is making progress each and every day of its history. It will not do for the Empire State of New York to sit down in its shell now, because it is overborne by this enormous weight of taxation, which the gentleman from Orleans [Mr. Church] speaks of, and not endeavor in some way or other to enlarge its means; to increase its capacity, to hoard up

still greater wealth to meet this taxation and increased burden upon the energies of the people, and not permit our limits to grow puny and weak, and our sockets to rust for want of oil, and to compel us to go down to our grave paupers and vagrants in this land of ours because we have not the power, the ability and courage to see that the onward way was the only way for security, and that it could be taken without any difficulty or doubt in regard to the future, and must of necessity result not only in relieving us of the incubus of present taxation, but place us upon the proud pinnacle that the great State of New York ought to occupy now and forever in the history of this government—excelsior in population, excelsior in wealth, excelsior in her prosperity, excelsior in the benefit and advantage and great good she not only does to her own people, but to the people of this entire Union, who are one common brotherhood.

Mr. OPDYKE—It is with extreme reluctance that I rise at this time to join in this discussion. The three gentlemen who have preceded me are all able and experienced debaters. They have all made earnest and eloquent speeches. Having no such gift myself, I feel that I am placed at a great disadvantage in attempting to follow them. Nor is this the only embarrassment under which I labor. The gentleman from Orleans [Mr. Church] in his speech yesterday, gave us such an exhaustive analysis of the two reports now under consideration, such a scathing criticism of that presented by the Canal Committee, and such a triumphant vindication of the report of the Committee on Finances, that I feel there is little left for me to say on the subject. I shall therefore aim, through brevity, to compensate the committee for my inability to impress on the minds of others the convictions that rest on my own. All I shall attempt at present will be to notice briefly some of the points made by the gentleman from Onondaga [Mr. Alvord], and to make a plain, direct statement of my reasons for approving the article reported by the Finance Committee, and for opposing that reported by the Committee on Canals. The gentleman from Onondaga [Mr. Alvord], in the portion of his speech delivered yesterday, seemed to me to illustrate the truth of Tallyrand's remark—that "words are intended to conceal thought." He spoke long and earnestly, scattering the flowers of rhetoric on the borders of his subject, but he scrupulously avoided the merits of the question under discussion. He began with a glowing eulogy of the canals. We were all prepared to join in that refrain before he spoke, for I hold that there is no difference of opinion here or elsewhere as to the great utility of our system of canals, especially the leading ones. No one doubts but they have contributed largely to the prosperity of this State and the States lying west of us. He next told us that active rivalries are at work to divert business from our canals and to divert commerce from the city of New York; that elevators will soon be used on the upper and the lower Mississippi; that locks are in course of construction to facilitate ship navigation on the St. Lawrence; that canals and railroads are branching out from Portsmouth, Virginia; that the Baltimore and Ohio, and the Penn-

sylvania Central railroads are all emulous for the carrying trade to and from the West. And in this connection, much to my surprise, he also spoke of the Erie and New York Central railroads as rivals to be feared. I had supposed that these were part and parcel of our own system of transportation—that they were specially designed to contribute to the commerce of New York, as they in fact do. Of course, all the other rivalries he referred to are in activity. No one ever doubted it. They spring from that ever active principle of human nature, self-interest; and they result in that which gives vitality to commerce, free competition. In telling us these things he does not touch the question under consideration, nor does he impart anything new, for most of them have existed during the last generation. But he warns us that we must bestir ourselves or New York will lose its commercial pre-eminence. If the gentleman were more familiar with the operations of commerce at its great center on this continent, and more thoroughly versed in the principles or natural laws that govern these operations, he would entertain no such fears. Under the guidance of these natural laws, commodities always seek the best market, either through the cheapest or the most expeditious channels. These are the markets they will seek and the channels of transportation they will take, whatever we or others may do to prevent it. The city of New York holds the first rank in all these advantages, and is likely to hold it for all time. She furnishes the best market on this continent. She is provided with the best means of transporting passengers and freight, both inward and outward. Outward she has her lines of steamships, carrying passengers and freight to and from every important market of the world; inland she has her cheaper and slower routes of transportation through the lakes, the canals, and the Hudson river; and she has her speedier and dearer lines of transportation in the New York Central, in the Erie, in the Pennsylvania Central, and New Jersey railroads. Nor are these her only advantages. She has one paramount to all these. The commercial capital of this continent is mainly concentrated there; it is the center of finance and exchange as well as the center of commerce. It is there where the owners of products and merchandise can get advances upon their property and can obtain credit. These are attractions which are almost equal to cheap transportation, and are very essential to the operations of commerce everywhere. Another advantage of the city of New York is the fact that three-fourths of the foreign commerce of the country is concentrated there. The statistics of that commerce show that from seventy to seventy-five per cent of the entire imports of the United States are brought to the port of New York. And, sir, the vessels engaged in that traffic derive their principal profit from their home freights. It is known that merchandise and manufactured products of other countries, which are of great value proportioned to their bulk and weight, pay from five to ten times the rate of freight that the products of our soil pay in being carried to other countries. It is from the profits derived on these homeward passages

in bringing foreign merchandise, three-fourths of which is concentrated in the city of New York, that vessels sailing to and from that port can afford to carry outward freight at half the price at which it can be carried by vessels sailing from any other American port. Then, again, the city of New York affords the best market, because it is a world-wide market. It is the entrepot of the commerce of this continent, attracting customers from all other markets; and, also, from its large population affording the best home market. I might go on and enumerate other advantages, but I think I have named sufficient to show to this committee that there is no imminence of danger that the city of New York is likely, now or hereafter, to lose her commercial supremacy. On the contrary, it is within my own knowledge that she is absorbing to-day, and has been for years past, almost the entire commerce of her rival cities. The products of the great manufacturing establishments of New England, which were formerly sold almost exclusively at Boston, have nearly all been transferred to the city of New York. And so with the manufactures of Pennsylvania and Maryland, which were formerly sold at Philadelphia and Baltimore. They, too, have been transferred almost exclusively to the city of New York. I have been somewhat surprised during the progress of this Convention, to find many professional gentlemen and others from different parts of the State, starting to their feet with alarm whenever a subject has been under discussion remotely affecting the commercial interests of New York, lest we should do something that would mar the prosperity of that city. I have taken very little part in discussions of that kind, though I feel that I am as well entitled as any other member of this Convention to speak in relation to the commerce of New York, and to speak in the name of its merchants. I have been one of them for the better years of my life; I have devoted my time and my thoughts to the prosecution of commerce and the study of its principles; and I here declare that I have seen nothing in the proposition of the Finance Committee that is, in my judgment, calculated to endanger the prosperity of that city. It has been my privilege, sir, on many occasions, to speak in the name and on behalf of the merchants of that city. I have not that privilege here; but I will speak my own sentiments, and I venture to express the belief that in so speaking I represent the sentiments of a majority of them. Sir, I am proud of the merchants of New York; proud of the high reputation they bear the world over for integrity of character and scrupulous honor in all their commercial transactions; proud of their intelligence; proud of their munificence; proud of their public spirit and their patriotism. Their hands are ever open for every benevolent purpose; and when the safety of their country called—when civil war was precipitated on us by the firing on Fort Sumter, and the President called for volunteers, it is within my recollection that the merchants of New York, through their official organ, the Chamber of Commerce, with their usual promptitude of decision were the first to declare their determination to stand by the government, and to aid it with all the influence

they could exert; and, suiting their action to their words, they immediately subscribed upward of \$40,000, to aid in equipping volunteers for the field. And, sir, in addition to the general intelligence of the merchants of New York, it must be admitted that they thoroughly comprehend the interests of commerce, because it is identical with their own interests. That is a point on which they are ever watchful, and we have heard no note of alarm from them on the subject now under consideration here. I trust we shall hear none. They will look at this question as they look at all commercial questions, in a strictly business point of view, and that is, whether its effects on the commerce of New York will be beneficial or injurious. They will look upon it in that light. If they come to the conclusion that it would cheapen transportation and increase their commerce, they will approve it; if they come to the conclusion that it will do neither, they will disapprove it. They are aware that if any benefits are to be derived from the enlargement of the Erie canal—which I do not believe—those benefits would accrue wholly to the Western States and to the city of New York, and not at all to the agricultural or manufacturing interests of this State. I believe, and I think the merchants of New York believe, that the amount of increased taxation to which this enlargement would subject them, would overbalance all its benefits, if any. For one, I am thoroughly convinced that it would produce no benefits whatever. But, sir, there are other dangers threatening the commerce of the city of New York to which I will take occasion briefly to refer, the most imminent of which is that resulting from bad local government, and from bad legislation here in reference to the city of New York. If this Convention can do anything to protect that city from these evils, it will confer upon it a great boon. Our bad system of government there so neglects the wants of commerce, in failing to provide suitable docks and other necessary conveniences, and produces such excessive taxation, that it drives capital and commerce from our city. It causes life and property to be less secure, and makes that city, in all respects, a less inviting center for the concentration of capital and commerce. Legislation here has not always been wise, and has often inflicted serious injury on the commerce of that city. Another danger is in the present large indebtedness of the United States government, and its resort to high duties to pay the interest on that indebtedness. Commerce, to flourish, needs entire freedom. Every embarrassment thrown around it, by barriers like this, is an absolute injury; and, inasmuch as the city of New York owes its highest degree of prosperity to the concentration of foreign commerce there, it will be most injurious if the rate of duties should be made so high as to paralyze or dwarf that commerce. The only proper remedy for that threatened evil appears to me to be this: we should insist that Congress should establish its tariff of duties with a strict eye to revenue, and not to protection. Now, sir, it seems to me that by the enlargement of the canals at a cost which the committee have fixed at eight millions, but which I think the gentleman from Orleans [Mr. Church] has clearly shown would be like-

ly to quadruple that sum before it is accomplished would be a most unpromising method of cheapening transportation, or of maintaining our control over the products of the West. The gentleman from Onondaga [Mr. Alvord] yesterday stated and gave us a page of statistics to prove, that the cost of transportation on the canals was a mere trifle compared with that of the railroads. He made the contrast most striking; he made it out to be the cheapest means of transportation that our country affords. Sir, what more do we need? Cheapness is what commerce most desires; it cannot flourish on costly transportation unless combined with railroad speed. The natural inference seems to me to be that the immediate enlargement of the Erie canal, at the enormous cost involved, would not merely prevent a reduction of tolls, but necessitate an increase which would repel Western products. The gentleman from Onondaga also brought forward many other statistics, among which were those showing the aggregate imports and exports of the city of New York, and the value of the property moved upon the canals. He estimated that while the entire exports from the city of New York were but one hundred and eighty-six millions annually, the products delivered in that city from the canals were one hundred and thirty-one millions—nearly equal in value to the total exports of New York. Now, sir, what do these statistics prove? They simply prove this: that from the growing density of population both in the interior and in the city of New York and its vicinity, our foreign commerce is not growing in the same ratio as the population and wealth of our country. It is a universal truth that the more populous a country becomes, the less of agricultural products will be exported from it, because it will require a larger part of them for home consumption. Increasing density of population always tends to develop the manufacturing, mining and mechanic arts; and when the population grows so dense that it consumes more agricultural products than it produces, like England, for example, it necessarily becomes an importer of agricultural products and an exporter of manufactures. During the period of transition, the foreign commerce of a nation must gradually diminish. At the turning point it must reach its minimum, because it can have but a small surplus of agricultural products, and hence but slender means of paying for foreign manufactures. This country has entered upon that transition state, as is shown by the development of its manufacturing and mining interests. The growing density of its population is slowly approaching that point at which it will cease to be an exporter of breadstuffs. True, this period is yet very remote, but the truth of the principle I have stated is demonstrated by the statistics furnished by the gentleman from Onondaga [Mr. Alvord]. That is all they prove. Now, sir, does not this demonstrate the folly of a further enlargement of the Erie canal? If our exports of cereals are diminishing, and if the products transported by canal from the West to the sea-board are also growing less, as I will show presently, where is the necessity of further enlargements? It seems to me the gentleman's facts and figures tell, with crushing force, against his own argument. Another considera-

tion: The gentleman from Onondaga remarked on the tendency of the West, from its increasing density of population, to manufacture its own fabrics and to consume its own agricultural products. Sir, that is another reason why the export of agricultural products, such as are produced in this latitude, are likely to diminish. It is a well known law of trade that the exports of any given country cannot, in the long run, exceed its imports. Take a series of years together and you will find it to be so, and in the nature of things it must be so, as they pay for each other. If for one or two years you find an excess of imports, you may be sure it will be followed, for a like period, by an excess of exports. The revival of cotton culture in this country and our increasing production of the precious metals, both of which are mainly exported, must also diminish our export of breadstuffs. It is a necessary consequence; and it must ultimately force the people of the West to manufacture for themselves, because the higher degree of profit derived from the production of cotton and the precious metals, tends to supplant breadstuffs in our export trade. All these considerations, I maintain, show most clearly that, instead of there being any necessity for the further enlargement of the canals, either now or hereafter, it would be manifestly unwise to do so. Mr. Chairman, I will now proceed to consider briefly the reports of the two committees. I desire to say at the outset that the entire article reported by the majority of the Finance Committee meets my unqualified approval. As one of that committee, I joined in reporting it without any proviso or mental reservation. A careful consideration of the subject has convinced me that its various provisions are wisely adapted to our present financial condition, and that, as a whole, it is well calculated to secure the future honor and prosperity of the State. Criticisms have been made upon it by a portion of the public press, on the ground that it is too long, and that it trenches on the proper domain of legislation. The financial article of the present Constitution, together with that reported by the Committee on Canals, are equally liable to these criticisms. All three occupy much space, and it must be confessed that they all embrace questions of policy which have been usually left to the Legislature. But, sir, I maintain that these criticisms are both ill-timed and unjust. If made at all, they should have been made in 1846, when the practice was inaugurated of ordaining, by Constitutional provision, the future financial policy of the State. Or, if made now, they should be aimed at the present Constitution; and even then they could only be justified by proving that the financial policy which it ordained has produced bad results. This has not been attempted, nor can it be with any chance of success. I am not one of those who believe that the Convention of 1846 did its work so well that we, who have had twenty years in which to observe its workings and note its defects, cannot improve it. On the contrary, I believe our present Constitution to be susceptible of much improvement, and I should be glad to see many changes made in it which I am satisfied a majority of this Convention is not prepared to sanction.

But, sir, these criticisms are not intended to apply to the financial article it adopted. On the contrary, I feel that the people of this State owe a debt of lasting gratitude to the Convention of 1846, for the sound financial policy it then first incorporated in our organic law. It placed an impassable bulwark against that swelling tide of lavish appropriations of the public money and credit to unproductive works, which threatened, if persisted in, to bankrupt the State. It said to the Legislature, "Thus far shalt thou go, but no further." No one can doubt that these limitations of the financial power of the Legislature have been most salutary in their effects. I believe they have saved this State from insolvency. I believe they have saved from insolvency many of the Western States that had the wisdom to adopt their spirit and to place like barriers in their Constitutions. I think no one can doubt that but for these safeguards the indebtedness of this State to-day would have been double or treble, or perhaps quadruple what it is. No one can doubt that we should have had increased taxation.

The hour of two o'clock having arrived, the PRESIDENT resumed the chair in Convention, and under the standing order, the Convention took a recess until seven o'clock P. M.

EVENING SESSION.

The Convention re-assembled at seven o'clock, and again resolved itself into Committee of the Whole on the report of the Committee on the Finances of the State and the report of the Committee on Canals, Mr. SMITH, of Fulton, in the chair.

Mr. OPDYKE—At the time the committee took a recess I was speaking in commendation of the wise forecast of the Convention of 1846, in placing in the Constitution a prohibition against the use of the public credit or money for improper or improvident purposes. That Convention met at a period when the brilliant success of the Erie canal had led to clamorous appeals to the Legislature to extend the canal system to all parts of the State. The same sentiment obtained in most of the other States, and even one of the great political parties of the United States urged the general government to enter upon an extensive system of internal improvements. It was doubtless from the fear that the Legislature would yield to these appeals that the Convention of 1846 was prompted to take from it the power to do so. Nor did this interdiction come a moment too soon. I believe at the very time the present Constitution was adopted there were upward of a score of applications for canals pending before the Legislature. They were not without a show of justice, for they came from various districts of the State not benefited by the existing canals, and where no public funds had been expended. None of them would have yielded revenue to the State, and therefore should not have been entertained, because that fact proves that their utility would not have equaled their cost. Nor do I believe it wise that governments should undertake public improvements at all, unless the necessity be self-evident and the cost beyond the reach of private enterprise. But there was great danger that most of

the improvident schemes before the Legislature, through importunity and what is called log-rolling, to say nothing of corrupt influences, would have ultimately received its sanction but for the constitutional barrier then interposed. That barrier has proved fatal to the spendthrift policy that preceded its adoption. It stands in our constitution to-day, and, in my judgment, has been of inestimable value to the people. It has saved the State from an overwhelming debt, and the people from largely increased taxation, past, present and future. The people with one voice have approved these constitutional restrictions, and they still approve them. Not a murmur, not a note of complaint against them has reached the ears of the Convention. Now, sir, the article reported from the Finance Committee is simply designed to perpetuate and perfect the policy inaugurated in 1846. It does this by enforcing the pledges of the present Constitution, by continuing the legislative restrictions, and by adding thereto such additional safeguards as our changed financial condition and twenty years' experience have shown to be necessary to the future solvency and prosperity of the State. This is all there is of it—nothing more, nothing less. Like the financial article of the present Constitution, it is grounded on the conviction that public debts are not public blessings, and that they should be incurred only under the clearest evidence of their necessity or utility, and with the direct sanction of the people. I should trespass on the patience of the committee if I attempted a full analysis of the two reports under consideration. At present, therefore, I shall confine myself to explanations of the leading provisions of the article presented by the Finance Committee, and an effort to show the superiority of this article to that reported by the Canal Committee. The article of the Finance Committee provides that the faith of the State to its public creditors, as pledged in the present Constitution, shall be maintained inviolate. The Constitution pledges nearly three millions annually of canal revenue to sinking funds for the payment of principal and interest of the stock issued for the construction and enlargement of the canals, with the additional proviso, that if these revenues fall below the sum thus pledged, the deficiency shall be made up by taxation. This is a direct explicit pledge of the public faith, made in the most solemn and binding form that can be given to a governmental act, by being made a part of the organic law. The State may add to this security if it see fit, but it cannot without dishonor either diminish or change its form, unless it first obtain the consent of all holders of its stock thus secured. The article of the Canal Committee asks the people of this State to commit this act of dishonor, as I will show presently. Not so the article of the Finance Committee. It fully recognizes this solemn pledge, and in section 3 provides for its faithful fulfillment. It does this by a method more simple and direct than that of the present Constitution. It consolidates the separate sinking funds into one, where all the net revenues of the canals shall be placed, and applied to the first maturing debts for which they are pledged, until all such debts shall have been extinguished. This will greatly sim-

plify the financial accounts of the State. It will render them comprehensible to any one at a single glance. In addition to this, it will save the State from serious loss of interest by permitting the payment of any of its maturing canal debt directly from the general sinking fund. This cannot be done under the present plan of keeping separate sinking funds for each class of its canal indebtedness; and the consequence is that large balances in some of them are not unfrequently lying idle or loaned to banks at about half the legal rate of interest, while money is borrowed at much higher rates to make good deficiencies in others. In a word, the consolidation of the sinking funds will save the State a large amount of money, and at the same time enable every citizen to understand its financial condition. This knowledge, under the present complicated system of separate funds, is known to but few. In fact, it extends but little beyond the precincts of the Comptroller's office. Section 4 of the Finance Committee's article recognizes and provides for the fulfillment of another pledge contained in the present Constitution, namely, that all moneys drawn from the people by taxation, to make good the deficiency of canal revenue, to meet the pledges to public creditors, shall be returned to them through the general fund whenever the surplus revenues of the canals will permit it. These advances with interest at five per cent now amount to \$18,000,000. There can be no doubt that this pledge is as binding on the State as that made to the public creditor, unless the people of their own free will see fit to waive it. They have an undoubted right to do this if they deem it wise. But, sir, does it follow that this Convention has the right to assume that they are willing to waive or postpone the fulfillment of this pledge, and, in effect, attempt to coerce them into it by engraving that policy on a new Constitution to be submitted to them? Clearly not, as it seems to me. The revised Constitution may contain many new provisions that the people may approve, while they may, and probably will, emphatically object to the indefinite postponement of the return to them of eighteen million dollars guaranteed by the Constitution. There is something more sacred in a specific pledge to refund money than in an ordinary constitutional provision. It involves the public faith. It is a contract to which there are two parties, and which cannot be impaired by the State without breaking its own faith and at the same time infringing the Constitution of the United States. We have no right to deprive the people of their freedom of choice on such a proposition as this. As I said before, the question is a different one to those involved in ordinary constitutional provisions. The most that this Convention can properly do in regard to it, is to submit it to the people as a separate, distinct proposition. If we deem the waiving or postponement of this pledge conducive to the public good, we may so recommend in a distinct proposition, submitted to the people to whom the pledge is made. But it seems to me that even then nothing short of a unanimous vote would fulfill all the conditions requisite to the perfect preservation of the public faith; for I hold that a majority cannot with justice vote away the vested rights of the minority. Before passing

from these questions of principle to the practical question of canal enlargement, which the Canal Committee's article provides for, I will briefly notice some provisions of that article for the purpose of showing its utter disregard for the pledges of the present Constitution. Section seven of that article provides that the \$2,000,000 of pledged money now in the sinking funds, together with the accruing revenue of the canals, shall be consolidated into one fund, and that the whole shall be hereafter applied as follows:

1st. To pay the principal and interest of the canal debt falling due within the year.

2d. To pay the interest on the general fund debt due within the year.

3d and 4th. To the enlargement of locks and other improvements of the canal.

Now, sir, when we consider that all these funds are sacredly pledged by the Constitution to the two classes of liabilities first named in their list of preferences, and that these liabilities for the next few years will require under their programme little over a million dollars annually, it will be seen how palpably their article, if adopted, would violate the plighted faith of the State. It proposes to take all the surplus money that shall remain in the sinking fund, after adding to the present balance of two millions, all accruing canal revenue, and after deducting about one million per annum for payment of canal liabilities, and to expend this money in the further enlargement of the canals. That committee estimate the accruing canal revenues at three millions per annum. Add one year's receipts to the present balance in the sinking fund, and it will make a total of five million dollars at the end of the ensuing year. Deduct one million for payments on account of canal debt, and it leaves a balance of four millions, which, under this section, will be withdrawn during the first year from a fund pledged to the public creditors and expended in canal enlargement. So, in the years that follow, though in diminishing annual installments, until eight millions shall have been thus withdrawn from the pledged sinking fund. Sir, is not this diversion of funds pledged to the public creditors a palpable, flagrant violation of the plighted faith of the State? Would it not dishonor the State? If A should pledge to B specific securities for the payment of a loan, and subsequently withdraw them without B's consent, would not public opinion stigmatize the transaction with even a harsher epithet than broken faith? This is precisely what the article of the Canal Committee proposes the State of New York shall do. And yet the transaction is less defensible in a State than in an individual, because its creditors have no other reliance than its good faith. It cannot, like an individual, be sued. If it breaks its faith in one instance it will be inferred that it will do it in all. Consequently, one act of dishonor like this might so impair the credit of this State, as was so well said by the gentleman from Orleans [Mr. Church], as to bring the price of its obligations down to the level of those of Mississippi. This Convention, I feel sure, will not sanction any such proposition. The article of the Canal Committee also proposes to postpone indefinitely the repayment of the \$18,000,000 advanced to the ca-

nals, without providing a method for first obtaining the explicit consent of those who made the advances and to whom the Constitution pledged their return. This would be another breach of the public faith. These, it seems to me, are fatal objections to the Canal Committee's article. If the canals be enlarged at all, the necessary funds must be provided by some other method than that they have proposed. It must be done in consonance with the honor and good faith of the State, which I have no doubt is practicable. Now, sir, for the purpose of considering the naked question of canal enlargement on its merits, I will assume that all constitutional and financial difficulties may be overcome by the adoption of a suitable article, so that we have only to decide upon the expediency of a further immediate enlargement. This is a question on which the members of this Convention are known to entertain different views. For one, I am resolutely opposed to that policy on grounds which I will proceed to state as succinctly as possible. Before doing this, however, I desire to disclaim any unfriendliness of feeling or prejudice against the canal interests of the State, and especially as against the Erie canal. I have always regarded that work as one of the greatest and most beneficent in its results that has ever been constructed in any country. It gave an immense impulse to the prosperity of this State; it gave to its agricultural interest a world-wide market; it contributed largely to the commercial pre-eminence of the city of New York; it transformed the forests and prairies of the West into fertile fields bearing rich harvests; and it has justly attached to the name and memory of the great man who projected and aided so efficiently in its accomplishment, a crown of enduring honor in the proud title of public benefactor. Nor can I quite agree with my friend from Monroe [Mr. Clarke] that the canals have performed their mission. True, sir, they have been, in a large measure, superseded by the introduction of railroads. That more expeditious method of transportation has taken from the canals all their passengers and the more valuable portion of their freight; but it has left to them all commodities of little value proportioned to their bulk and weight, such as coal and the products of the forest. Of these, and such other freight as they will continue to attract, there will doubtless be sufficient to give the Erie, the Champlain, and the Oswego canals profitable employment for generations to come. Thus much I feel to be due to the past glory, and to the present and prospective usefulness of our State canals. But, sir, considerations like these afford no warrant for their further enlargement. That warrant, under our present financial condition, can only be found in imperative necessity. It must be shown beyond peradventure that the present capacity of the canals is not equal to the wants of commerce; that it is not capable of carrying all the freight offering it, or that is likely to offer in the early future. Unless this can be shown, and shown conclusively, how can we ask the people to sanction the enlargement at a time when they are borne down by unprecedented taxation, and when the depreciation of the currency doubles the ordinary cost of all improvements. They would justly regard

the proposition as savoring of madness. If the enlargement be made at all, its commencement should be postponed until its necessity becomes self-evident, and until our currency is restored to its normal condition, when it could be done for half the sum it would cost now. This is the time for paying old debts, not for contracting new ones. But, sir, I maintain that there is no necessity, present or prospective, for the further enlargement of the Erie or the Oswego canal. Any one who will carefully analyze the canal statistics that have been furnished us, it appears to me, must arrive at that conclusion. These statistics show: first, that from the year 1853, when boats of larger capacity were first admitted on the Erie canal, until the present time, there has been but a trifling annual increase of business. The aggregate average increase of tonnage during that period of fourteen years, has been but six and one-quarter per cent, which is less than one-half per cent of annual increase. Second, they show that the number of lockages to and from the Hudson river during the same period, has gradually decreased from the number of 53,826 in the year 1853 to the number of 20,226 in the year 1866. Third, they also show that in the year 1847, Alexander's lock, west of Schenectady, passed boats to the number of 43,957; and that the same lock passed but 29,882 boats in the year 1866. In other words, it passed in 1866, 14,075 less boats than in 1847. This, be it remembered, is one of the locks of the Erie canal, that best tests its capacity, because it is located at a point where its business is largest. These figures prove that its business in 1866 was nearly 50 per cent less than it had actually accomplished in 1847. Fourth, these statistics show that while there has been a slight increase of the aggregate tonnage during the last 18 years, there has been a large diminution in other classes of freight than coal and products of the forest. This shows that the railroads are rapidly supplanting the canals in the transportation of all articles of much value. This tendency is, and will continue to be strengthened by the Atlantic cable. That great achievement has made the electric telegraph, which may be properly called the nervous system of commerce, a unit the world over, so that the prices current in all markets are instantly brought to the knowledge of merchants in each and every market. Each strives to be first in supplying a market where scarcity of a given article has produced an enhanced price. To do this they must use the quickest means of transportation. Thus time becomes an element of the highest value in commerce, and merchants can afford to pay for accelerated transportation much more than the mere interest saved on the value of their commodities. For these reasons I deem it impossible that canals can hereafter successfully compete with railroads in the transportation of articles of much value. Merchandise they have already lost; flour and wheat they are rapidly losing, and there are indications that Indian corn, the least valuable of our agricultural products, will at no distant day be carried exclusively by rail. These facts show that whenever commerce shall need enlarged means of transport between the

sea-board and the West, it will be likely to supply that want, as the gentleman from Monroe [Mr. Clarke] suggested in his report, by the construction of double track railroads, designed exclusively for freight. But let us return to the canal statistics I have cited. What do they prove? They prove first, that the business of the Erie canal, since its enlargement has increased only at the rate of one-half per cent per annum. Second, that, judging by its lockages, its business has reached little more than half its present maximum capacity. This is, in a great measure, confirmed by the concurrent testimony of its present and past engineers. In fact, every one admits that with efficient management its present capacity is far beyond the business offered it even in the exceptional years of 1862-63, when the Mississippi was blockaded. Third, that if we except coal and products of the forest, there has been a large diminution of business. In support of these conclusions, I ask leave to read a letter from a former canal commissioner, addressed to a member of the Finance Committee, which I think affords proof of the correctness of the views I have expressed:

HINDSBURGH, 8th August, 1867.

HON. FREEMAN CLARKE:

Dear Sir:—I noticed in this day's *Democrat* an extract from Church's report on Finance; also, Joshua M. Van Cott, Augustus Frank and others of the same committee, concurring in the report with one reservation. They doubt the assumption that the present capacity of the Erie canal is adequate to the future wants of the trade; also, your minority report taking strong financial grounds against further expenditures for the enlargement of the canals. It is not to be wondered at that men should take that view, who have but an imperfect knowledge of the practical working of the canals, when the businessmen who patronize them are constantly clamorous (and in part justly so) about the great delays of their property in transit upon them. The facts are, these delays are not for the want of capacity of the canals, nor is it the fault of those that navigate them, but are attributable solely in the loose, careless and wasteful manner the repairs and the safety of their navigation is conducted. I am frank to give it as my opinion, that under a proper system of the repairs of the canals that hundreds of thousands of dollars would be saved annually to the State, and an increase of the capacity of the Erie canal by removing all impediments, at least four fold. Sir, the capacity of the Erie canal, when in perfect order and properly managed, is now and will be for years to come equal to any emergency that may follow. Why, sir, under that state of management they will pass a boat of two hundred tons burden at any given point every three minutes. This statement may startle men who now are of the opinion that the only remedy is another crusade on the treasury of the State, or, in other words, to place it in the hands of men who have no other object in view but to empty it of its contents and saddle the old pack horse (the dear people) with taxes to replenish it, as you will readily see. A boat properly manned and the lock in good order and properly tended can pass through it in that time. The enterprise of our citizens has placed

upon our canals hundreds of boats at an expense of about \$5,000 each, that are now idle, or, if in commission, at prices that are not *remunerative*. The question is, what is the cause, and the remedy, if any? In my humble opinion it is, first, for want of a navigation that business men can, with some certainty, rely upon, and secondly, for want of a stability in prices that business men will not view as an extortion or an imposition. There has been, and no doubt is now, in existence at the west end of the Erie canal, for the purpose of protecting the interests of boatmen, a combination that has been carried to the extent of charging double a fair paying price for transportation. For instance, but a few years since they demanded and did receive twenty-six cents per bushel (when constant employ at thirteen cents would be a living trade) to carry a bushel of wheat to New York at the time there was no apparent cause of this extortion but the power of the combination as above. This course has driven some of the best customers of the Erie canal to seek other routes of business, and encourage railroads to equip themselves for the carrying of grain on their roads in competition with the canals, and to the injury of the very interest the object was to protect—the revenue of the canals. The above evils should and must be remedied, or the time may come when the people will not only be taxed to pay for the construction of the canals, but their maintenance.

With high esteem, your obedient servant,

JACOB HINDS.

Now, sir, with a present capacity for much more business than it has ever secured, and with but a slender prospect of a future increase, where is the necessity of further enlargement? No provident or judicious capitalist would venture his money on such a cast. He would as soon think of depositing it in mid-ocean, for in either case it would be simply an oblation at the shrine of folly. It would be still more improper for the State at this time to enter upon this large and unnecessary expenditure, because her citizens are already overburdened with public debts and taxation. The gentleman from Onondaga, this morning, gave us, with more than his accustomed warmth of coloring, a glowing picture of the almost boundless wealth of the people of this State. He estimates it at six times the amount shown by the assessors for the purposes of taxation—that is to say, at about ten thousand million dollars; and he noticed contemptuously the taxation to which they were subjected. In his golden imagination one hundred and eighty millions of taxation per annum is not worth naming, a mere feather on the camel's back. I am sorry to bring the gentleman down from these brilliant flights of his imagination, from what may aptly be termed the poetry of finance to its sober prose realities. But as I am in the habit of dealing in plain matter of fact, I feel constrained to do it. The gentleman is altogether mistaken in his estimates. He places the wealth of New York nearly as high as the United States Census Bureau makes that of the whole United States, and he has placed its gross annual product of wealth quite as high as that bureau places the whole products of the United States—namely two thousand millions.

I will inform the gentleman that there is no state or nation on the face of the globe where the wealth averages more than \$1,000 per capita. The laws that govern the production, distribution and consumption of wealth forbid it. This maximum would give to the people of the State of New York an aggregate wealth of four thousand millions; and as I believe she stands in material prosperity, at the head of all the nations, I am willing to concede her this amount, though I am satisfied the assessed value of property for purposes of taxation, in the city of New York, is nearly fifty per cent of the actual property, which, if the same rule obtained throughout the State would give an aggregate of three thousand three hundred millions. But what does this wealth consist of? According to the gentleman from Onondaga [Mr. Alvord] more than one thousand million dollars of it are in United States and other public securities! Why, they are but the ghosts of departed property. They represent, not property in actual existence, but that which has been consumed by government. They are not property in themselves, but simple mortgages on posterity. Are the people of this country any richer for holding twenty five hundred millions of government securities? Not a particle. The securities and interest on them stand as a mortgage on their present and future earnings. If owned abroad the country would be that much poorer. Foreigners would then hold the mortgage. They do in fact already hold five hundred millions of them, and quite too soon they will hold them nearly all; and then nearly the whole of the interest will be drawn from the country every year. Then we will feel the burden even more sensibly than at present. But, sir, when the tax is paid at home it is none the less a burden. Where it is paid by those of moderate means, it abates the full amount paid from their means of providing comforts for their families. Where paid by the rich it takes so much from the capital of the country which would be otherwise loaned and employed in the re-production of wealth. Duties on imports which the gentleman from Onondaga does not regard in the light of taxation, is the worst kind of tax, because it taxes men not according to their wealth or their means of paying, but in proportion to the amount of their consumption; in other words, according to the size of their families; and for the additional reason that it is the most expensive method of collecting taxes. For every dollar thus paid to government the consumers pay more than one and a half dollars, to say nothing of the tribute paid to the manufacturers of similar articles produced at home. No sir, this unprecedented taxation is no trifle to be sneered at. It probably equals the whole net profits of the productive industry of the State, and would exceed them but for the rigorous economy it enforces. As the value of the dollar shall be increased by the contraction of the currency, the taxation will become still more burdensome. This contraction is progressing. Since the war ended upward of two hundred million dollars, in legal tender notes of various kinds, have been withdrawn from circulation and canceled. Within the last twenty days alone upward of twenty millions of compound interest notes, which served

as a part of the bank reserves of legal tender, have been paid off and destroyed. Sir, I have no desire to magnify our public indebtedness or to underrate the ability of the people to pay it. Large as this indebtedness is, I agree with the gentleman from Onondaga that the object for which it was incurred, was worth all it cost, yea, tenfold its cost; but I desire to assure that gentleman that the people of this State will need all their resources to meet the public and private demands upon them, without any uncalled for additions. This is specially true if the general government shall continue to contract the currency, as I trust it will moderately and cautiously, as I desire an early return to a sound convertible currency. But the government should not enforce this policy too rapidly, as it would be liable to so depress the business of the country as to cause a general suspension of payments, public and private. Section six of the Finance Committee's article provides for the conversion of the bounty debt into a stock, payable in the year 1885, to the end that the money to be repaid into the State treasury after the extinguishment of the canal debt, on account of advances to the canal, may be applied to the payment of the bounty debt and interest. This arrangement will enable the State at once to reduce its taxation several millions annually, and to that extent relieve the people or their present burdens. Adopt the article of the Canal Committee and no such relief will be given. On the contrary, while it proposes to tarnish the honor of the State by diverting a part of the pledged sinking funds from their legitimate purpose to the work of canal enlargement, it evidently contemplates the probable contingency of increased taxation, as is shown at the close of its eighth section. The gentleman from Ontario [Mr. Lapham] in opening this discussion, assured us that his action in this matter was governed solely by his desire to promote the public welfare. I believe him fully, and I trust we are all governed by the same unselfish motive. We only differ in judgment as to the best means of accomplishing that end. Mr. Chairman, a few words in contrast of the two articles under consideration, and I have done. The article of the Canal Committee proposes to bind the State to the policy of enlargement by constitutional provision, and to enter upon the work at once, which makes it irrevocable. The article of the Finance Committee proposes to prohibit the Legislature from entering upon that or any other scheme involving a large expenditure of money; but it does not attempt to tie the hands of the people. They will have the right, at any time they may deem it judicious or necessary, to direct any enlargement they please by a change in the Constitution, just as they did in 1854. Unless gentlemen on the other side can demonstrate the present incapacity of the Erie canal to carry all the freight offering it, or can show conclusively that its enlargement will shorten time or cheapen transportation, they must yield the argument. I am convinced they can do neither, because the facts are overwhelmingly against them. The weight of evidence clearly shows that its present capacity, under efficient management, is at least sixty per cent, and probably one

hundred per cent more than its present business. It is doubtful if the enlargement would in any degree shorten time, and I hold it to be self-evident that it would prevent any abatement in tolls or cheapen freight. And, finally, if we should desire enlargement we could not consent to do it by the method they propose, because it violates the public faith. On the other hand, the article proposed by the Finance Committee is sound in principle and prudent in policy. It will preserve the public faith, and, as I believe, promote the general welfare. The gentleman from Onondaga [Mr. Alvord] some days since, being straightened for parliamentary reasons for asking that the two reports be referred to the same Committee of the Whole, characterized the report of the Canal Committee, of which he is a member, as a minority report. I hope this committee will agree with him in the propriety of that name, and that it will so report to the Convention.

Mr. MILLER—Neither my health nor my inclination will allow me to detain the committee with any very extended remarks at this time. I shall confine myself to those parts of these reports that seem to be antagonistic to each other, and on which an issue has been made between the two committees. The Finance Committee, following the spirit of the present Constitution, have reported an article that provides that the surplus revenue of the canals, after meeting the expenses of management and ordinary repairs, shall be applied first to the payment of the canal construction debt, the general fund debt chargeable upon the canal revenues, the canal enlargement debt, and the canal floating debt, making an aggregate consolidated canal debt amounting, on the 1st of July last, to \$21,407,682.22. After the payment of this consolidated canal debt, the article provides that the surplus revenue of the canals shall be applied to the payment of the debt due the people of this State for moneys raised by taxation and advanced to the use of the canals, amounting, at five per cent interest, as the committee, say to \$18,007,289.68. This, in brief and in part, is the plan of the Finance Committee. It looks to the preservation of the credit of the State by the honest, straightforward, old-fashioned way of paying the State debts. The plan of the Canal Committee is very different from this. It provides that the surplus revenues of the canals, after meeting the expenses of management and ordinary repairs, shall be applied, first, to the payment of the interest on this consolidated canal debt and to the payment of so much of the principal of the original canal debt as falls due within the year; and, second, to the enlargement of the locks on the Champlain canal, limiting the expenditure to \$300,000, and to the enlargement and improvement of the Erie, Oswego, and the Cayuga and Seneca canals, so as to admit, in the language of the committee, "the convenient passage of boats, the entire length of the said canals, twenty-three feet in width, two hundred feet in length, drawing six feet of water, and propelled by steam or otherwise, but limiting the expenditure to \$8,000,000." Now, sir, notwithstanding the dazzling magnificence of this scheme, and notwithstanding it is supported and urged by gentlemen for whose opinion and for whose ability I

have the greatest respect, yet it does not commend itself to my judgment. I do not propose to discuss the details of this plan here, but one can hardly help noticing in passing that the amount named seems wholly inadequate to the work proposed. Why, sir, if I understand aright the gentleman from Onondaga [Mr. Alvord], these estimates were not made by any officer of this State responsible to the State and to public opinion for the correctness of his estimates; but they are based upon evidence taken before the committee, evidence searched out by subpoenas and upon evidence, too, that was hunted up to support a proposition and a plan that had been determined upon long before the evidence was obtained. I do not say that an estimate so made may not be correct, but I do say that the people may well be excused if they have some fear, if they have some apprehension, that a calculation so made may have some mistake about it. Besides, sir, we have been so often deceived by estimates, the estimates which have been made have so invariably fallen below the cost of the work when completed, that people may well be excused for fearing in this case that the amount named will only commence the work and not finish it. And I fear that they may suspect that we are here trusting to the easy facility with which money is obtained to complete works once begun. But I confess, Mr. Chairman, that, for myself, I am opposed to any enlargement scheme at this time, because I believe that it is not demanded by any present or prospective necessity, and because I see that it will draw us deeper and deeper into debt, when I believe the best interests of the State demand that we should set our faces steadily and firmly in the opposite direction. The plan of this Canal Committee merely proposes to pay the interest on the canal debt, while it abrogates by an indefinite postponement the debt due the people of this State for advances made to the use of the canals. I know the gentleman from Onondaga [Mr. Alvord] this morning informed us, and claimed credit for so doing, that the Canal Committee had retained this same provision securing payment to the people of the debt due for advances made to the canals. But that gentleman knows, and this committee know, that that provision would be inoperative and dead the moment we should adopt their plan and make this new debt a prior lien upon the canal revenues. And when he says they propose to insert and adopt this provision, he must be aware that these are words of delusion, and only "keep the word of promise to the ear and break it to the hope." No, sir, the effect will be to release this honest debt due the people of the State, now amounting to over \$18,000,000, and secured by solemn constitutional provision. Now, Mr. Chairman, I am of the opinion that the time is inopportune for any such proposal as this. I think the people need all the debts due them and all their resources to meet their present great indebtedness. What is our situation? Our State debt amounts to little less than \$50,000,000, and our town, county and city debts amount to \$90,000,000, making nearly \$140,000,000 that the people of this State must pay, principal and interest, by taxation. Besides,

we must bear our share of the \$2,500,000,000 of national debt, one-fifth of the interest of which is paid by the people of this State. At the same time we must furnish the means to carry on the governmental affairs of town, county, State and nation. This, sir, is a financial exhibit that the mind of man can hardly comprehend, and that would dishearten and discourage any other people under the sun than ours. I grant, sir, that the greater part of this debt was created during the late war, and was created with the fullest and freest consent of the people. When the national existence was imperiled our people placed every thing at the disposal of their government. They knew that great exertions were needed, they hastened to make them, and, like their fathers, they staked their fortunes as well as their lives upon the issue. But, sir, notwithstanding this debt was thus willingly and freely made, it nevertheless remains as a gigantic fact that cannot be ignored and that must be met; and it is in this light that the people are everywhere treating it. They are to-day displaying as much moral heroism in their efforts in putting down this debt as they displayed during the excitement of war in the field of battle; and their efforts in this regard are receiving the admiration and wonder of the ablest statesmen of Europe. We have shown the world how to put down a great rebellion, and we are now showing it that rarer and more difficult achievement, how to pay a great national debt. Sir, notwithstanding the present falling off in prices, and the consequent decrease in incomes, (and I speak whereof I know when I say that the revenues of the farmers of Delaware county for the year 1867 will not be two-thirds as great as for the year 1866), yet, notwithstanding all this, the people do not demand a reduction of taxes, but they do demand that their rulers shall practice the strictest economy that they shall enter upon no new schemes of expenditure, and that all their surplus revenues, after meeting the absolute wants of the government, shall be applied to the discharge of their sacred obligations. Now, sir, is it wise, is it just, to talk to a people thus circumstanced of new loans and new expenditures? Can anything but the strongest, direst necessity justify or excuse it? Why, sir, the only possible hope of tiding over our own present financial difficulties rests upon the steady, buoyant courage of the American people. Is it, then, not foolish and is it not dangerous to dishearten men with such burdens upon their backs? Will you tell the people that you are only watching their struggles to see how much more they can bear? Will you tell them that the very heroism of their efforts is to be made an excuse for new burdens and new impositions? I ask gentlemen to consider the effect of such a course upon the spirit and courage of our people. But, Mr. Chairman, I have another objection to the plan of the Committee on Canals which seems to me to touch the honor of the State. Our present war debt of \$27,000,000 was created under this Constitution. The fifth section of article 7 has this provision: "Every contribution or advance to the canals or their debt from any source, other than their direct revenues, shall, with quarterly interest at rates then current, be repaid into the treas-

ury for the use of the State out of the canal revenues, as soon as it can be done consistently with the just rights of the creditors holding the said canal debt." Now, Mr. Chairman, is it not fair to presume that our creditors, who loaned us this \$27,000,000 of war debt, did so trusting in this provision of the Constitution? They knew that the canals of the State owed the treasury \$18,000,000 or \$20,000,000. They knew that they soon would be in a condition to pay, and that they were bound to pay by a solemn constitutional provision. Was not then this constitutional provision, a part of the security upon which we obtained this \$27,000,000 loan? And if so have we the moral right to change it without the consent of our creditors? I grant you, Mr. Chairman, that the credit of the State is now good, but I remember when the indebtedness of our people was as nothing compared with what it is to-day, yet it required the best efforts of our ablest statesmen to save us from public discredit and dishonor. Sir, the way to preserve the credit of the State is to preserve the faith of the State in its letter and in its spirit. And surely, it is no time now to trifle with the plighted faith of the State. Nothing but public confidence stands between us and a financial catastrophe. Once overthrow this and State credits and private fortunes go tumbling together into bankruptcy and ruin. Again, Mr. Chairman, I think it is an unfortunate time to present this proposition, when there is such a general distrust of our canal management—a distrust, I might almost say, amounting to a disbelief in the possibility of an honest administration of these affairs by the State. I know that a new plan of supervision is proposed, and a plan which, I concede, promises some improvement; but it is yet new and untried, and trial can alone test its value and secure for it the confidence of the people. Let us try this new plan by experience. If it works well, if it secures efficiency and honesty in administration, then we may confidently go to the people and ask for their money, giving them the assurance that it will be applied for the work proposed. But I beg of you let us not have the hardihood to ask the people of this State to advance \$15,000,000 or \$20,000,000 upon their credit when we cannot reasonably give them the assurance that one-quarter of their money will not go to line the pockets of dishonest contractors and corrupt officials. Sir, this fungus of corruption is not the growth of a day or a year, it is peculiar to no time and to no administration. It has been fastening itself to and growing upon our public works for the last forty years. Parties change, administrations change, but there is no change in this except from bad to worse. The men of the 'ing belong to all parties and are bound by no ties but those of interest. I certainly trust the remedy proposed by the committee may prove effectual, but I ask that, before they demand of me and my constituents new loans for new improvements, they shall give us time to see if their remedy meets their expectation, and I submit that there is no such necessity for this improvement as forbids us taking ample time to test this plan by trial and experience. What is this pressing necessity that demands of us to enter at this time upon an era

of new loans and new expenditures? The Governor of the State in his last annual message placed the capacity of the Erie canal at 8,000,000 tons, 4,000,000 each way. The auditor of the canal department, in his report to the Legislature, places it at the same amount. Other persons of information and authority say that its capacity may be increased very much above this figure by employing additional help at the locks doing the most business. State Engineer Richmond, in 1863, estimated the capacity of the Erie canal one way, taking downward freight, at over 5,000,000 of tons; and it is understood, I believe, that the present State Engineer has made an estimate of about the same amount over 5,000,000 of tons. I wish to deal fairly with my own judgment and with the judgment of others, on this question of capacity. I know it is a disputed question. But, sir, if we are to rely upon anything we must rely upon the statements and estimates of men who are informed, of officials who are responsible to the State, and responsible to public opinion for the correctness of their estimates. We cannot rely upon evidence picked up in the street. We cannot tell whether it is interested or disinterested. We must rely upon the statements of our officials, and I say relying upon these we cannot place the capacity of the Erie canal below 8,000,000 of tons, 4,000,000 each way. Well, here then we have this acknowledged capacity of the Erie canal. Now, sir, the average tonnage of all our canals for the last ten years is 4,646,307 tons, less than sixty per cent of the capacity of the Erie canal alone. The aggregate tonnage of all our canals for the most prosperous year of their existence was 5,775,220 tons, a little over seventy per cent of the capacity of the Erie canal. While the greatest down tonnage seeking tide-water of the Erie canal was in the year 1862, when the Mississippi river was dammed by blockade and the whole tide of business of that mighty valley was turned across our State, and yet, in that exceptional year, the down tonnage of the Erie canal was but 2,916,049 tons, less than seventy-five per cent of the capacity of the Erie canal. Now, Mr. Chairman, I ask, where is this pressing necessity? Shall we say that, on account of the gross mismanagement of our canals, we cannot use seventy-five per cent of their capacity? Sir, this, if true, would be a very poor argument on which to go to the people for new loans. They would tell us that it was not money, but honesty, that was needed; they would tell us, too, that they would not intrust more money for new works to men who were unable to preserve and use the works we already have; they would remind us that it is only the stewards who have been faithful over a few things, that can reasonably ask to be placed in charge of many. But there is no need of any new loan to keep the canal up to its full capacity of eight millions. And I will say here that I have no doubt that all the evidence that this committee have raked together, showing that there was any lack of capacity, has grown out of the fact of the gross mismanagement of the canals, and that when kept up to their full capacity, they could find no such evidence. I repeat, there is no need of any new loan to keep

the canal up to its full capacity of eight millions of tons. The present Constitution makes the expense of management and repair, the first charge upon the canal revenue; and any Constitution that we may frame will do the same. There is no difficulty in keeping them in good order, and no excuse for not doing it ought to be tolerated for one moment. And if it is kept in good order I submit that there is no present or prospective necessity for this enlargement. I wish to read from the report of the auditor of the canal department made last winter—and it is certainly authority that no friend of this enlargement scheme can gainsay, for he most strongly advocates this very project. In speaking of the competition between the canals and railroads, the auditor says:

"This competition or diversion compels us to keep up a rate of tolls that we could well dispense with, if our canals had all the business they could do—were taxed to the extent of their carrying capacity. This has not hitherto been the case, nor will it be for years to come."

Now, I ask this committee if this admission of the best informed and ablest champion of this enlargement scheme does not settle the question of its necessity, not only for the present, but "for years to come?" But we are told that we may expect a largely increased business for our canals, from the increased productions of the West. I grant you, sir, that the West is still in its infancy, that its resources are but partially developed, and that possibly its products seeking a market at tide water, may increase in the future as they have in the past. Yet, I think my friend from New York [Mr. Opdyke], who preceded me, very plainly demonstrated that as population increased in the West, as their cities increased, that the export of agricultural products would certainly decrease. But admitting that there would be some increase, I think, Mr. Chairman, that our experience for the last ten years has taught us that our canals cannot monopolize the carrying business. They have in the railroads of the State, active, energetic and successful competitors. We cannot avoid this competition in the future, if we would. The application of steam to land carriage marked a wonderful advance in the progress of the age. All other means of transit and travel have been surpassed by this. In less than forty years from their infancy, the railroads have secured more than one-half of the carrying business of the country. In 1831, we had but seventeen miles of railroad track in the State of New York. In 1867 we have three thousand and twenty-five miles. This is the work, the achievement of the enterprise of our own citizens, commanding vast sums of corporate wealth, and conducting their business affairs with that economy and with that energy that private interest can alone secure. These railroad corporations have opened up new lines of traffic and of travel, and have developed the hitherto almost inaccessible portions of the State. But they have not hesitated to run their lines by the side of our canals, and to compete for almost every branch of their business. From the first, they carried away the passenger business, once of importance to the canals; then they took light freights, merchandise

and such as are now carried by express; then those perishable articles that demanded a speedy transportation and a quick market; and now, sir, the transportation of flour and grain is divided between the railroads and our canals, with certainly no very flattering advantage in our favor. Whenever these products are seeking an uncertain or a falling market, the shipper will gladly pay the increased cost of transportation rather than risk the uncertain loss of delay. No, sir, we cannot safely count upon any carrying business for our canals where they come into competition with railroads, except the cheap products of the forests and mines; and possibly some enthusiastic railroad man would say there might be a doubt about this business, because it depends upon improvements in railroad transportation, 'which is yet in its infancy, and in which improvements are continually being made. When we see, as we have seen within the last three or four weeks, the railroads carrying away the freighting business from the steamers and barges on the Hudson river, can we feel very certain that the canal horse and the canal-boat will be an overmatch for a like competition. If not, then I submit that we cannot safely count upon an increased business for our canals from the increased productions of the West, and I, sir, for one, am unwilling to call upon the people for new loans for new improvements, to meet a prospective business, that we are almost certain never to see. My friend from Oneida county [Mr. T. W. Dwight], whom I have long known and long admired for his thorough scholarship and broad views, said in one of our early debates that the question of money or indebtedness was not to be taken into account when empire was at stake, and intimated, I thought, that this question of canal enlargement might be of this nature. Now, Mr. Chairman, while I should certainly agree with my friend in his general proposition wherever country or liberty were in peril, yet I confess I cannot see its application to the question now before us. We should certainly retain or gain nothing of empire by building works that were never to be needed. Besides, sir, even if in the competition now upon them, our canals should lose something of their business, it is not going into foreign hands, it will not go to any other State or the people of any other State—it will be wrung from us by the enterprise of our own citizens using the improvements and the inventions of the present against the devices and shifts of the past. We shall be beaten if beaten at all, by a law of progress to which we can submit without discredit. But, sir, I do not anticipate any such wonderful change as this. I believe that our main canals will be for years, probably for centuries, valuable and noble public works, the object of a just State pride. But while I give them all this credit, and all the credit claimed for them in years past, I cannot be unmindful, Mr. Chairman, that public works built by the government are not the chief glory of a free State. Empires and despotisms that command the unpaid or poorly paid labor of their subjects can surpass us in these achievements. In this respect we could not endure comparison with half civilized Egypt or stationary China. But, sir, there is another field in which we have no

rivals and few competitors. The almost unaided enterprise of our citizens has within the last forty years, from the feeble beginning of an untied project, built and put in use thirty-seven thousand miles of railroads in this country, binding together States by bonds stronger than written Constitutions, by the golden ties of commerce, and the stronger ties of acquaintance and affection. These, sir, are works and achievements with which the world in all its history can bring nothing to compare, and they are the especial and the peculiar fruits of free institutions, and are only possible where individual enterprise is stimulated by freedom, is unfettered by restriction and is unenervated by tutelage. If we must glory let us glory in these the unrivaled products of free States. But, Mr. Chairman, I will not detain the committee further at present. I cannot support the project proposed by the Committee on Canals, because I see that it leads through increased taxation to increased indebtedness; because, I believe the amount named will not build the works proposed, but that in a few years we shall have the same hungry pack of contractors, tolled on by the eight or ten millions that we now throw them, in full cry, demanding more loans to complete the work begun. I confess, Mr. Chairman, I do not like the prospect; I prefer very much the plan proposed by the Finance Committee, that promises an annual decrease of taxation, and, at all events, promises what we can see for ourselves, that, by the 1st of October, 1878, our canal debt will be paid, and that we may reasonably expect within the next twenty years that the whole State debt will be extinguished; so that when the next Constitutional Convention meets it may meet to frame the organic law for a State free from debt, and for a people prosperous and happy; surely "a consummation devoutly to be wished."

Mr. E. BROOKS—So much has been said, and well said, upon the two sides of this question that a listener might well pause and hesitate before coming to a wise conclusion upon the discussion, even progressing as it has thus far. For myself, Mr. Chairman, differing in some respects from the two committees which have made their reports, and most sincerely anxious to do that which will accomplish the greatest good to the greatest number of the people of the State of New York—standing here to-night as a member of this Convention, to whom the people have intrusted great and important duties—I feel, speaking for myself simply, as if there was a divided duty to perform. Sir, I look upon the question in this light, and I presume it addresses itself in the same way to every member of this Convention. What is my duty as a member of the Constitutional Convention of New York? What is my duty here in reference to the public credit and character of the State of which I am a citizen and just now a representative? This is the question upon the one hand; and then I naturally put to myself this other question, hardly less important, as a citizen and as a representative: What is my duty in regard to the commercial interests of this great commercial State—a State which bears upon its escutcheon the motto of "Excelsior," more because of its commercial ad-

vantages, geographical, political and otherwise than perhaps for any other reason—a State, indeed, which Providence has greatly favored, both in its location and in its character, and in regard to which the gentleman from Onondaga said not too much when he thanked God that he had been born in a commonwealth to which such great commercial advantages had been given? Now, Mr. Chairman, when I look upon this question as a commercial one, I desire to consider it in all its relations; and I think those gentlemen err greatly who suppose that we are strong enough as a State, either in our geographical position or otherwise, to maintain our commercial supremacy unless, indeed, we shall struggle much more in the future than we have been called upon in the past, to maintain that supremacy. Sir, I cannot shut my eyes to the fact that there are people in other States just as enterprising as we are, just as ambitious of success as we are, and only second to ourselves in two conditions—first, that we have been favored with something more of capital than our neighbors; and secondly, that we enjoy some great advantages incident to our geographical position. But, sir, we cannot in this case, as in some others, judge of the future by the past. We must take things as they are. We must look eastward and westward, to the south and to the north, and we must spread the map before us and behold eye to eye and face to face, as in a mirror, the great commercial enterprises which at this day are occupying the attention of the American people. I cannot shut my eyes to the fact of the great power of the West. I see it in the future as in the past, with all the natural increase incident to its great territory. I see these States multiplying so fast that it is almost impossible for a man of old or middle age, who does not keep pace with the progress of events, or even to remember the number of States that from time to time are added to the American Union, or to comprehend those which are destined to be added in the great future. I see, for example, Mr. Chairman, a great desire on the part of our neighbors in Canada to secure through Canada a portion of the commerce of the Western States. I see among that enterprising people, where it was my lot to be born—the State of Maine, a rock-bound coast, with hardly earth enough upon its rocky surface to produce anything compared with what may be produced on the soil of other States of the Union. But those people are, nevertheless, full of will and energy and enterprise. Favored by their commercial position, they are struggling to secure a part of the great commerce of the West and of the country; ready to contribute hereafter as in the past, of all their means to secure a portion of the commerce of the West; a people, too, who, in the early history of the railroad enterprise of this country, built the Grand Trunk railroad leading from Canada to Portland, and afterward leased it to the people of Canada at a very large money and trade advantage to themselves. I also see a disposition to-day to build a railroad from the city of Ogdensburg, in this State to the commercial sea-board in the State of Maine. Sir, this is the attraction in one direction—with the St. Lawrence carrying vessels seaward, as in

times past, even from the queen city of the lakes to the ocean, and taking away cargoes of grain, selling them to the people of Liverpool and returning with a cargo of goods, and making a profitable voyage to all engaged. And although it is true that in the immediate past these enterprises have been suspended, yet it does not become us to conclude that there is an end to such enterprises in the future. And this is not all, Mr. Chairman; I find that the people of this State have been enabled to connect themselves with the people of the West through those two great thoroughfares known as the New York Central and the New York and Erie railroads, by a combination which has resulted in immense advantages to the city from whence I come, and to the State which we all represent. And it is because, and mainly because, the people of the State of New York had a precedent in these great enterprises, that we have reaped from time to time so many advantages from the completion of these public works. Now, sir, in regard to the Erie canal, and in regard to some of the other canals, I do not concur with any gentleman, certainly not with my friend from Monroe [Mr. Clarke], who supposes that this enterprise has accomplished its great work. He would not undervalue it in the past, perhaps he would not undervalue it in the present, but he doubts as to the future. I believe, sir, it has a great future before it. I believe it is capable of accomplishing most important results in the interests of this great people. And for one, while I am not willing to go as far as some others to contribute to the improvement of the Erie canal, I am equally unwilling to stand still and say that nothing shall be done in the future. I desire, in a word, Mr. Chairman, to maintain the credit of this State, first and foremost, regarding this as the great good, the great necessity, the great preserver of our character as a State. And I mean to go with my friend, the Chairman of the Committee on Finance, just so far as shall be necessary, in letter and in spirit, more perhaps in the spirit than in the letter, to maintain the credit of the State, in regard to all those provisions of the Constitution of 1846, which impose duties upon the Legislature, upon the State officers, and upon the people. Credit, sir, to us is the very life blood of the State. It has made us what we are. It has, during the terrible civil war through which we have passed, given a high tone to the State and a higher character to the bonds of the State than even those of the federal government. Now, sir, in regard to this commercial question, which to me is one of high importance, I put to myself this inquiry: "Is there capacity, by means of the Erie canal, by means of the Oswego canal, by means of the New York and Erie railroad, by means of the New York Central railroad, to maintain in the future, as in the past, the commercial enterprise which links the fortunes of this State with the fortunes of the great West?" Sir, I would like to have a practical solution of this question, if it were possible to have one, and for this reason: I call attention, first, to great rivalries springing up on the sea-board and in Canada, in order to secure the commerce of the West. I see corresponding rivalries

springing up in Philadelphia, in Baltimore, on all lines of railroad coming to the city of New York, such as the New Jersey Central, passing via Harrisburg and Pittsburg on to the West, and in the Pennsylvania railroad which is one of the greatest enterprises in the country, conducted with magnificent results, returning a large fortune to those who started the enterprise, and one of the most prosperous undertakings in the United States. And I look also to the tonnage, moreover, of a road like the Baltimore and Ohio road, and I see results there quite equal to those accomplished upon the New York and Erie railroad, and even upon the New York Central railroad. I also see lateral branches extending from this Baltimore and Ohio line to Washington, to the towns in Maryland and Virginia. I see nowhere in the West, nowhere in the Middle States of this Union, south of New York, anything like a flagging or despondent spirit. Every body looks to the State of New York to see what this State has accomplished in the past, and seeming determined by that restless energy, common to the people of this entire country, to say, in the language of one of our famous citizens of Rochester in times past, "that some things can be done as well as others." And he, sir, in my judgment, is a very blind man and a very indifferent man to the great interests of the country, who supposes we can fold our arms and stand still, either in regard to the railroads, or in regard to the canals, while these enterprises are being carried on all around us. Sir, it is impossible. My friend from New York [Mr. Opdyke], who took an important part in this debate, to whom I listened with so much interest, intimated that the city of New York had no fear of rivalries. With all respect to his large experience—and I know it has been a large experience as a merchant—I beg leave to differ from his conclusions. Sir, the most painful sight that meets my eye as I pass to and from my home in Richmond county, over the bay of New York, is the large number of foreign flags floating at the mast heads of the ships in the harbor. Norwegian, Danish, German, Swedish, British, Russian, Dutch, flags representing every commercial nation under the sun, are seen there, all engaged as commercial carriers, and to our disadvantage in the interests of the commerce of the country. Will you believe me, Mr. Chairman, when I tell you that there is but one line of steamers of the score of lines sailing from the city of New York to Europe which is owned and conducted by Americans? All our foreign commercial enterprise, so far as it relates to steam, with this single exception I have named, and these steamers built years and years gone by, are owned and conducted by those who sail under foreign flags. Again, sir, New York city, though numbering a million of souls, is not the only city of great enterprise. I am obliged to state what is true, that there are a greater number of houses in the city of Philadelphia, by some thousand or more, than there are in the city of New York. I am also obliged to say, because truth bears out the result, that in regard to great manufacturing enterprises there is as much industry, thrift and capital in the city of Philadelphia as there is in the city of New York. The city of Boston also grows, and grows

vastly, and almost as great branches of trade in proportion to ourselves. The city of Baltimore also grows. We have advantages incident to our position, yet the only hope on earth we have of maintaining these advantages is in the thrift of the people, in the development of all enterprises as they arise. Wherever there are mines to work, mountains to level, valleys to build, railroads to make, our duty is clear. New York, it is true, has many advantages incident to all present great improvements, because her people, sometimes, with a far reaching sagacity, and with a considerable capital, invest in all national public works. But the people of New York have not always been sagacious. In the early history of this very Erie canal, I remember having read that men like the Romaines, Sharpes, Hunters, the Ogden Edwardses, and the Ulshoeffers, the appointed representatives of a great and powerful party of the day, came to this city of Albany and remonstrated against the building of the Erie canal. And what do you suppose was the reason they gave? It was this: that if such a work should ever be completed, if there should be a navigable highway between the lakes and the ocean by the Hudson to the city of New York, it would take from that city so much of trade that they would be losers thereby! Yet experience developed that in ten years the wealth of the city of New York, in its real estate, increased to the amount of fifty-five millions of dollars, and in twenty years more, this amount trebled, and soon after nearly quadrupled. Such were the mistaken ideas of that day; and I fear we shall make mistakes now if we suppose that either the Erie canal has accomplished all it is capable of, or that we discharge our duty in leaving the canals precisely as they are. Such, at least, is my judgment. The East and the West should be wedded and welded together in the future as in the past. Our interests, in a great measure, are identical, although the one is an agricultural and the other a commercial people. We represent in some respects, Mr. Chairman, the idea of Benjamin and Joseph of old, where the one was reared in Egypt and the other in Canaan. Yet they were brethren, and with common interests and laboring for a common object; and this is or ought to be true of the people of the whole country. The canals and railroads already built have done wonders in linking the interests of this Union together, and should do still more.

"Mountains interposed make enemies of nations,
Which had else, like kindred drops,
Been mingled into one."

It is by removing these barriers from time to time that we have annihilated, as it were, time and space, and have often worked harmoniously together in the common interests of the country. What was it but the Pacific railroad, in prospect, in the time of the greatest anxiety, as in 1861, which served to cement the State of California to the rest of the Union? Some gentleman may say it was patriotism, and not interest. Perhaps it was, but patriotism and interest often go hand in hand. Other gentlemen may say it was merely self-interest, present and prospective. That, to a large degree, is no doubt true, for in the prospect of a Pacific railroad, which has since

been commenced, and which is rapidly advancing, the people of that far-distant territory have a social and political bond, strong as iron and steel and social intercourse can make it. We thus see how the people in the most distant parts of the country were made friends, and how they co-operated with the government in raising the men and money necessary to maintain the integrity of the Union. In a period of our history not very remote, we used to say that "cotton was king." Since then we have seen the five millions of bales of cotton raised before the war, diminished to about half that number; and we have also seen the grain products of the West contributing immensely to our personal fortunes, and so much to our national prosperity at home and abroad, as to save this government in the early history of the war, through the large demands which were made for American cereals in Europe, and which placed the exchanges of the country so much in our favor, that for nearly a year after the war began there was hardly any demand for specie. It is important that we should realize what the West is, and what it is capable of producing. Sir, corn to us is better than cotton, important as cotton is. The latter we bring to New York and send to Europe, or a vessel goes to Savannah, Charleston or New Orleans, takes in a cargo of cotton, carries it to Havre, Liverpool, Antwerp or Cronstadt, in Europe, and there is an end of it. Its benefit is great, but it is a very limited benefit, compared with the granaries of the West. Corn enriches two great valleys, the valley of the Ohio and the valley of the Mississippi. The good realized in food and trade, are diffused among the whole people, and this is not all, for both in regard to corn and cotton all we send to Europe returns to us in other values of trade and commerce. We take these cargoes of corn across the Atlantic. We load the same ships with the products of the old world, and bring them to the ports of the United States and for every one hundred dollars the sum of thirty or forty dollars is received back in the way of duties upon imports, and for every thousand, ten thousand, or one hundred thousand dollars, a proportionate sum. Herein again, Mr. Chairman, our foreign commerce is greatly enhanced. Thereby, too, our inland commerce is greatly enriched also. Now we are to look at what transportation costs, and I present this fact as one of great importance. Transportation then, from some of the great producing States of the West, cost three times the amount of cultivation. We hear of corn selling to-day in the far west at eight cents a bushel. And this fact suggests another which is, the necessity of easier and quicker means of transportation from the West to the sea-board. There are States in the West where not one-tenth of the land is cultivated, where corn has been used as fuel even where wood can be secured for seventy-five cents per cord. There, too, with food so cheap, the people had to pay enormously for other necessities of life. Now, in my judgment, the cost of additional highways would be paid for by the increased value of lands, and very often and very soon reimburse the principal necessary to accomplish the best results. In

1862, of 522,000,000 bushels of wheat forwarded, 108,000,000 were sent over Lake Erie to the sea-board. Now, sir, we are to remember that in all the States beyond Lake Michigan shipments are almost closed or prevented from going to the sea-board owing to the enormous cost of transportation. Food is the very life of our American commerce. The country around the five great lakes, Superior, Michigan, Huron, Erie, Ontario, have been the great sources of supply for years and years for us and for the whole sea-board. Just realize for a moment what the capacity of these lakes are. There are 90,300 miles of water, an immense space hardly to be realized; upon their surface are borne millions of commercial property. These lakes have a drainage of 335,000 miles, with a shore line of 5,000 miles. These five lakes, each and every year are producing greater and greater results. Yes, sir, these 5,000 miles of shore line on these great Mediterranean seas, as I may call them, extend on the shore 1,500 miles more than the broad distance which separates us from Europe. Now, sir, let us see what this lake commerce produces. The number of vessels sailing upon them sometime since—I have not very late statistics—but the last I have been able to secure—give the number of vessels on those lakes at 1,664, with a commerce of \$13,257,000. This lake commerce has a value of \$450,000,000. This interior commerce has often been discarded or disregarded by the people, and I am sorry to say, as a representative from the sea-board, very rarely appreciated by the city of New York. The idea there is that foreign commerce is the great thing for us, and almost the only commerce of great value. But, sir, what is the great commerce of the sea-board? In one day I have sometimes seen pass up the waters of New York vessels, foreign and domestic, to the number of two hundred and more within twenty-four or forty-eight hours. Very many of them came loaded with the products of the Old World, with coffee, tea, sugar, silks, satins, with all those things which attract the palate and the eye, but which after all do not bear the comparative value that many people put upon them; more of them were from our domestic ports, and sir, let me say here to the people of this State, that the inland commerce of the United States is at least of equal importance—in my judgment of greater importance—than the foreign commerce of the country. There is proof of this at hand. In 1866 there were 505,607 tons more of freight through our New York canals to tide water than in the entire imports of the city of New York. Let me observe, also, in regard to the West, that only fifteen and one-half per cent of the soil of the States bounded by the lakes I have named, is now used for production owing to the absence of population. By and by these lands will be settled. Sixty-six millions of bushels of grain will be raised this year more than last, not counting California, which, in the judgment of many people, is capable of producing grain enough to feed the entire population of the United States. On these northern lakes, by northern routes connected with the great interests of the city and State of New York, we are receiving these vast quantities of grain, the product of our rich granaries.

Why the ancient Nile and the banks of the river Po, and that most productive of all countries, ancient Sicily, were not capable of a production equal to the Western States. As I have said, what we export returns to us again in different ways. We ought, therefore, to consider in this connection the vast number of people which are coming from the Old World to the new, latterly to the number of five or six thousand each week. To my regret—but it is only an incident to the disturbed condition of the Southern States—none of these people settle at the South. They still go West; and they go now as they were accustomed to go in years past. The great cry still is in the Old World, "Westward, ho! Westward, ho!" Whether they land in New York, or whether they land in Canada, wherever they land, these great lines of railroad take up these people, or the great body of them, and send them to their future habitations in the West. They come literally as Milton said:

"A multitude like which the populous North
Pour'd never from her frozen fountains
To pass Rhene or the Danaw."

The star of empire still westward moves its course. It is hardly in the power of human observation or skill, or judgment, or even of human imagination, to see the end of this great beginning. Now, sir, it is our duty, to do all in our power to secure the commerce of the West. I do not suppose the Erie canal, whether it be enlarged to the extent desired by the Canal Committee, or whether it shall be capable of producing even as some people say it will produce with an enlargement, ten millions of tons each way each year, instead of eight millions both ways, which it can carry now; or even supposing it be capable of transporting four times what it does, can even then carry any great proportion of the commerce of the West. By and by I shall endeavor to show that, while we discharge our duty in reference to the Erie canal, we have a further and equally important public work to which the attention of the people of the State should be given. There is another subject to be considered, and that is with all our energy and thrift, we of the sea-board are incapable of producing what we eat. We can do a great many things, but we cannot raise our daily bread. The six New England States are incapable of producing a three weeks' supply; and this great State of New York cannot raise in twelve months what it consumes in six. The State of Pennsylvania is capable of producing what it consumes and nothing more, and even Pennsylvania is gradually losing her power to produce what she consumes from year to year. The State of Ohio produced in 1864 some six millions of bushels in excess of her own consumption. But the New England States, and the Middle States, and the State of Ohio fell short six million five hundred thousand bushels in ten years, while the great North-west, beyond Ohio, produced fifty-five millions of bushels of grain beyond what it consumed, about all of which was exported to Europe, or sent to the sea-board States for their consumption. Now, realize the interests which a city like Buffalo has in commerce. I suppose there are good reasons for the anxiety which that city manifests in regard to the action of this Con-

vention upon the immediate questions now pending here. Sir, I have seen the most wonderful, as I regard them, revelations of commercial power in the city of Buffalo, and that within the few weeks past. I have seen a heavily laden vessel passing with grain to the city of Buffalo in the early hours of the morning, before noon taking in another cargo, and in the afternoon setting sail for the city of Chicago. Sir, what produced that result? It was in part the elevators where we see the gigantic power of steam which often in a single engine has more strength and capability than thousands of men. But Buffalo need not fear for the future. What has made the city of Chicago? Does any one suppose it was altogether the facilities for navigation? Not at all. Her latter growth and prosperity is due mainly to the twelve different railroad lines which center there, and which, from this nucleus ramify and spread over the great West, down to the South-west, and which again makes its connections with the still more wonderful West beyond. Sir, Buffalo has her thrift, energy, enterprise, capital and railroads centering in her borders and in these alone the means of future wealth and power. She need not be apprehensive of the future. And, in my judgment, we can discharge our duty toward the Erie canal without wronging Buffalo or any other town or city. We need not check enterprise in one direction or the other. We have only to see that it is wisely and honestly administered. Wherever there is a necessary repair—and I will not say ordinary repair—but such if need be, for example, as the enlarging of the thirteen small locks west of Montezuma. If they ought to be doubled in size, let it be done. We must make necessary improvements, and if to remove the bench walls on the eastern division of the canal is one of them, let the work be done. I trust this committee and this Convention will consent that all the surplus revenue of the canal may be expended for this purpose after paying the canal debt and the interest on the debt as it falls due. In my judgment, this will accomplish all that is now necessary, if not for the next twenty years. I appreciate as highly as anybody the financial importance of this question. I realize that in twenty years the expenditures necessary for the carrying on of the State government have increased from \$750,000 per year to \$3,500,000 dollars per year and for the ordinary expenses of government. I realize also the necessity of economy. I suppose this is what the chairman of the Finance Committee wants, an honest administration of the canals and the husbanding of all the resources of the State. I know him too well to know that he desires for a moment, or that any member of his committee desires for a moment, to arrest any necessary improvement which may develop the commerce of the State, or which may be just and necessary to any portion of the people of the State. Now, sir, there is another question. We live in the days of an inflated currency. Before this war commenced \$230,000,000 or \$250,000,000 of paper money, with the gold and silver which we had, the banking paper being redeemable in gold and silver—\$250,000,000, I say, served entirely the purposes of the business of this coun-

try, and this when we were a united, prosperous and happy people. This \$250,000,000 has become \$700,000,000 or \$800,000,000. Every man knows when he goes to purchase anything that it requires two dollars now where it required one dollar then to procure the same article. What is the reason? Simply that two paper dollars are worth but one gold dollar. Since then we have arrived at this result. Let me say that I desire to see the existing debt of this State, if not of the nation, paid in the currency of the country, and simply because I believe it will be easier to pay this debt off in the currency of the Federal government, which has become the only currency we have, than it will by and by for us to pay it when specie payments are resumed, albeit this is in the far future. Our expenditures, as I have stated, are increased largely. I desire, therefore, that we shall just as quickly as possible, and while it is comparatively easy, pay the debt and thus conform to the provisions of the Constitution, which requires us, for example, to pay off the debt created in 1846, in 1868. I desire to see it wiped out; I also desire to see the canal and the general fund debt paid without postponement. I also desire to see the enlarged canal debt extinguished, and every debt that stands upon the statute book wiped out, so that just as soon as possible we shall appear before the world a great State, free from the burdens of debt, and blessed with a light taxation. Let this be done, and whatever remains unexpended, expend upon your canals. In regard to the \$18,000,000 due the people, this debt may be regarded in some measure as a debt from the people to the people. Let it be suspended as long as is necessary to secure real canal improvements, whatever they may be, if the money can be placed under a wise administration of State officers, who are capable and honest. There will be money enough, in my judgment, to make these necessary improvements. Sir, it does not become us to be indifferent in regard to the taxes imposed upon the people. It is no slight thing to pay, or to raise, even, in a State like this, \$12,500,000 a year. It is no small thing for the cities of this State—and there are not many of them—to be taxed over \$30,000,000 a year. Nor is it a small thing to be required to pay our proportion of the federal income-tax and our foreign tax upon imports, and our share of the federal debt, which is near five hundred millions. I do not agree with the gentleman from Onondaga [Mr. Alvord] at all, when he says a tariff tax is one of the easiest to be paid. I know there is a large class of intelligent gentlemen who do believe in this theory. But, in my judgment, the process is a means of concealing great results, while imposing great burdens upon the people. For myself, I hope to see the day in this country when the great body of the taxes imposed will be placed as the internal revenue tax is, from house to house and from person to person, with one set of machinery and collectors, so that the citizens of the United States, one and all, will realize what taxes are, and mark, and carefully mark, those who impose them, and where they go. Why, sir, the statement made yesterday by the chairman of the Committee on Finance [Mr. Church], and repeated by the gentleman from

New York [Mr. Opdyke] this evening, is an appalling one. They declare that the taxes upon the people of this State to-day amount to more than forty dollars per head. But if you throw out the people of this State, which ought not to be done, the taxes upon the people of the United States amount to more per head than they do upon any people in any civilized or uncivilized country on the globe—ten dollars being the highest in England and Wales, nine dollars in France, while it is some seventeen or eighteen dollars per head for all the people of the United States. Sir, this is an enormous taxation. And now, in passing, let me say a word in regard to another subject. The \$18,000,000 due to the people. A large part of this is raised in this State by auction duties, and these duties originated when the Erie canal was commenced, and when a solemn pledge was made by the people of this State that as soon as the Erie canal was completed the tax should cease. The Erie canal was completed in 1835; some five if not more millions of dollars have been thus imposed upon the city of New York. It is a tax upon the commerce; and the State should act justly toward the people of its metropolis, and toward its great commercial interests. This commercial tax should be repealed, and no more taxes of this kind imposed. In regard to this taxing power, and this debt power, we ought also to remember that we are not only taxed more per head than any other people in the world, but that while our debt is considerably less than Great Britain, yet the rate or tax being so much lower there than it is here, it costs the people more money and more taxes to pay the demands upon our debt than it costs the people of Great Britain. The debt of Great Britain is four thousand millions, of dollars. and the tax upon it amounts to one hundred and three millions of dollars. The interest on it averages some three-and-a-half per cent; here the interest averages five and six per cent in gold or vastly more than the whole bonded interest tax. Something has been said in regard to canal estimates. Every gentleman who has here named them, admits that no reliance can be placed upon them. In looking over an old canal document the other day, published during the legislative sessions of 1846 and 1847, I find this fact, that after \$15,454,799 had been expended on the canal enlargement, the highest estimate for the completion of the enlargement of the Erie canal was eleven millions of dollars; and the whole cost, instead of being these eleven millions, after over fifteen millions had been expended, making a little over twenty-six millions in all, was \$39,425,334, thirteen millions more than the highest revised estimates! And yet the Canal Committee here, after the engineers have made their estimates that it would cost over twelve millions for one kind of locks, over thirteen for another kind, and fourteen and a fraction for another, undertake to say that the hundred locks, which they demand can be built for \$35,000 a lock, and that all improvements can be secured, making the enlargement complete, and all work accomplished for about eight millions of dollars! All such estimates

are simply preposterous; no reliance whatever can be placed upon them; I would rather concur in the judgment of the Chairman of the Committee on Finance [Mr. Church], although it seems to be an extreme statement, that it will more likely cost twenty-four millions of dollars to complete this work, than the twelve millions estimated by the engineer, or the eight millions, presented by the Canal Committee. I shall not detain the committee long, but I desire to make some remarks in regard to the railroads of the country. I have already alluded to those rival routes which exist in the East and the West, and which are contemplated elsewhere; and I have alluded also to those commercial enterprises in contemplation, through slack water navigation and otherwise, by which an effort is made to unite the cities of Baltimore, Norfolk and Richmond with the Ohio river. Let me call attention to some facts in order to show the importance of railroads at home and the capacity and means of these roads. I do it with figures before me which show the amount of service performed by the railroads, and the amount performed by the canals. The number of tons carried on all the canals in 1866 was 5,775,220. The number of tons carried on all of the railroads in the State from the 1st of October, 1865, to the 30th of September, 1866, was 9,210,476. Four millions more carried upon the railroads of this State, in tons, than have been carried by the Erie and other canals! And if the railroads of this State furnished the amount of the value of cargoes taken to and from the city of New York in my judgment it would be easy to prove that they had carried a larger proportion, in value, than the canals. The number of tons carried on all the canals in 1865 was 4,729,654—a little more than one-half the quantity carried on the railroads the same year. Here is a most striking fact, and yet, if we were to judge by what we have been hearing from day to day and from hour to hour, those railroads are carrying but a trifling amount, compared with the canals. The number of tons of merchandise carried on all the canals in 1864 was 179,878; and the number of tons of merchandise carried on all the railroads in the State in the same year was 1,334,768. The whole amount of toll received in 1866 was \$4,436,639; and the toll on the merchandise only \$131,021. The tolls on products of the forest the same year were \$940,688; and the tolls on coal the same year were \$294,755. The increase of the products of the forest the same year was 302,679 tons; the coal carried the same year was 413,930 tons, making the increase of coal and products of the forest 718,609 tons over 1865; while the number of tons carried on the Erie and New York Central railroads alone, in 1866, was 4,844,989 tons. Mr. Chairman, I feel so unwell, from present and previous indisposition, that I must either relinquish what I have now to say, or ask that the committee rise.

Mr. KERNAN—I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Kernan, and it was declared carried.

Whereupon the committee rose, and the

PRESIDENT resumed the chair in Convention.

Mr. SHERMAN, from the Committee of the Whole, reported that the committee had had under consideration the reports of the Committee on Finances and the Committee on Canals, had made some progress therein, but not having gone through therewith, had directed their chairman to report that fact to the Convention, and ask leave to sit again.

The question was put on granting leave, and it was declared carried.

Mr. ANDREWS moved that the Convention do now adjourn.

The question was put on the motion of Mr. Andrews, and it was declared carried.

So the Convention adjourned.

THURSDAY, September 5, 1867.

The Convention met at ten o'clock A. M.

Prayer was offered by Rev. SAMUEL F. MORROW.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. ARCHER—I ask leave of absence for the sitting of to-morrow and Monday evening.

There being no objection, leave was granted.

Mr. SHERMAN—I ask leave of absence for to-day until Tuesday next.

There being no objection, leave was granted.

Mr. CLINTON—I ask leave of absence for Monday evening's session.

There being no objection, leave was granted.

Mr. FOWLER—I ask leave of absence until Wednesday next, after the sitting of to-day.

There being no objection, leave was granted.

Mr. RATHBUN—I ask leave of absence after to-day until Tuesday next.

There being no objection, leave was granted.

Mr. RUMSEY—I desire to ask indefinite leave of absence for Mr. W. C. Brown, of St. Lawrence, on account of sickness.

There being no objection, leave was granted.

Mr. WALES—I ask leave of absence from the sitting of Monday evening next.

There being no objection, leave was granted.

Mr. LANDON—I ask leave of absence after the session of to-day for one week.

There being no objection, leave was granted.

Mr. BARTO—I ask leave of absence for Monday evening next.

There being no objection, leave was granted.

Mr. SEAVER—I ask leave of absence from the session of this evening until Tuesday morning next.

There being no objection, leave was granted.

Mr. BALLARD—I ask leave of absence until Wednesday next, after the sitting of to-day.

There being no objection, leave was granted.

Mr. KERNAN presented a petition asking for the abolition of the Regents of the University.

Which was referred to the Committee on Education.

Mr. RUMSEY presented a petition of Goldsmith Dennison and other citizens of Steuben county, on the same subject.

Which took a like reference.

Mr. HARRIS, from the Committee on Cities,

their Organization, Government and Powers, submitted the following report:

The SECRETARY proceeded to read the report, as follows:

ARTICLE —.

SEC. 1. The chief executive power in cities shall be vested in a mayor, who shall be elected by the electors of the city, and shall hold his office for three years. He shall take care that the laws and city ordinances are faithfully executed. He shall receive, at stated times, for his services a compensation to be established by law, and which shall neither be increased nor diminished during the period for which he shall be elected. He shall not receive, during that period, any other emolument from the city. He shall hold no other office and shall be ineligible for the next three years after the expiration of his term.

§ 2. Any mayor may be removed by the Governor, but only after due notice and an opportunity of being heard in defense, and for causes to be assigned in the order of removal. In case the office of any mayor shall become vacant before the expiration of the term for which he was elected, the powers and duties of the office shall devolve upon the presiding officer of the board of aldermen, until the vacancy shall be filled.

§ 3. Except in the cities of New York and Brooklyn, the legislative power shall be vested in a board of aldermen; their number, the mode of their election and their term of service shall be prescribed by law. In New York and Brooklyn, the legislative power shall be vested in a common council composed of a board of aldermen and a board of assistant aldermen. The board of aldermen shall consist of twelve members, to be chosen by the electors the city at large. They shall be classified so that three aldermen shall go out of office each year, and after the expiration of their several terms under such classification, the term of office shall be four years. The board of assistant aldermen shall consist of one member from each ward, and shall be elected annually.

§ 4. The common council in New York and Brooklyn, and the board of aldermen in other cities, shall possess such powers as may be conferred upon them by the Legislature, but they shall have no executive powers.

§ 5. Every act, ordinance, resolution or proceeding which shall have passed the two boards of the common council of New York or Brooklyn, or the board of aldermen of any other city, shall, before it shall take effect, be presented to the mayor for his approval; if he approve it, he shall sign it; if not, he shall return it to the board in which it originated, with his objections, within ten days, or at the next stated meeting of such board thereafter. Such board, after the expiration of ten days from the time of such return, may proceed to consider such act, ordinance, resolution or proceeding, and if, upon such reconsideration, two-thirds of all the members elected to each board of the common council of New York or Brooklyn, or to the board of aldermen of any other city, shall agree to pass the same—or, if the mayor shall not return any such act, ordinance, resolution or proceeding within the time

above limited for that purpose, it shall take effect as if he had approved it.

§ 6. Boards of aldermen and assistant aldermen shall choose their own president and clerk, and such other officers as they may deem necessary.

§ 7. The comptroller, or chief financial officer, and the receiver of taxes and assessments of New York and Brooklyn shall be chosen by the electors of the city. Their respective term of office shall be three years. They shall appoint all subordinate officers in their respective departments. They may be removed in the same manner as a mayor may be removed by the Governor. In case either of said offices shall become vacant before the expiration of the term for which the officer was elected, such vacancy shall be filled by the Governor until the next city election, except that when the vacancy shall be created by removal, it shall be filled by the board of aldermen.

§ 8. Heads of departments and officers charged with the administration of departments shall be appointed by the mayor. Subordinate officers of departments shall be appointed by the heads or other officers in charge of such departments. All other executive officers shall be appointed by the mayor. Any officer appointed by the mayor may be removed by him at pleasure. All city officers whose offices may hereafter be created by law, shall be chosen by the electors of the city or some district or division thereof, or appointed by the city authorities, as the Legislature may direct.

§ 9. Justices of the peace, police justices, and all other justices of inferior courts not of record, shall be elected by the electors of the city or such district or division thereof as shall be prescribed by law. Their term of office shall be four years. Their number and classification may be regulated by law. In case of a vacancy occurring before the expiration of a full term, such vacancy may be filled by election, but only for the residue of the unexpired term. Any such justice may be removed by such court as may be prescribed by law, but only after due notice and an opportunity of being heard in defense, and for causes to be assigned in the order of removal.

§ 10. The State, for the purposes of local government, shall be divided into counties, towns, cities and villages, as heretofore, and no other local divisions or districts shall be made, nor shall any territory be annexed to a city, except for the purpose of changing its boundaries. All existing laws inconsistent with the provisions of this section shall become inoperative upon the adoption of this Constitution.

§ 11. The Legislature at its first session after the adoption of this Constitution, shall pass such laws as may be necessary to give effect to the provisions of this article. General laws shall also be passed for the organization and government of cities, and no special act shall be passed, except in cases where, in the judgment of the Legislature, the object of such act cannot be attained under general laws.

§ 12. The board of supervisors of New York is abolished, and the duties of such board shall be performed by the mayor

and common council, as the Legislature may direct.

§ 13. All city elections shall be held on the second Tuesday in April, and the official year shall begin on the first day of May.

§ 14. The Legislature, at its first session after the adoption of this Constitution, shall provide for the appointment of three commissioners, whose duty it shall be to reduce into a systematic code the laws of this State relating to the government of cities, with such alterations and amendments thereto as to them shall seem practicable and expedient. They shall report their proceedings to the Legislature for its action thereon.

§ 15. Every city shall determine the amount to be raised by tax therein for city purposes, including police and sanitary expenses, but no money shall be so raised for any purpose not previously authorized by law.

§ 16. Nothing in this article contained shall affect the power of the Legislature in matters of quarantine, or relating to the port of New York, or the interest of the State in the lands under water and within the jurisdiction or boundaries of any city, or to regulate the wharves, piers or slips in any city.

The report was referred to the Committee of the Whole, and ordered to be printed under the rule.

Mr. MURPHY from the same committee presented a minority report.

The SECRETARY proceeded to read the report as follows:

The undersigned, concurring with a majority of the committee in most of their recommendations, dissent from those which confer upon the mayors the sole power of appointing all the officers of cities, including the members of boards of administration, commonly called commissions, except the comptroller and one or two other officers. Such a power is entirely foreign to the genius of republican institutions, and unknown, in fact, in any department of our government, State or Federal. In the city of New York it would constitute a patronage in a single person greater than that of the entire government of most of the States of the Union, and create an autocracy which if it did not, by reason of the ineligibility of the mayor to re-election, enable him to secure his place indefinitely, would nevertheless enable him to name his successor and perpetuate his rule, or to place himself in any other position within the power of the electoral body to bestow. In the hands of a bad and ambitious man such a power would be fraught with the greatest danger to the interests of the community. The object which is sought to be obtained by the committee, that of unity and responsibility in the municipal government, can, in the opinion of the undersigned, be as certainly and much more safely effected by giving to the mayor a complete supervision of the city offices and a power of removal.

He dissents also from the proposition to have municipal elections in the spring, separately from the general elections; and for the reason not merely of the expense, but because two exciting elections in one year keep the people in constant political agitation, and in the end leave the canvass to those who have the inclination to be in

turmoil, or seek to advance themselves to office. All experience has shown that municipal elections, held at a different time from the general elections, do not command the attention or attendance which they receive when both are held together. The question may be safely left to the Legislature.

Believing, therefore, that the highest considerations of political justice and expediency, as well as the safety of the people of cities, demand that their public officers should as far as practicable be held directly answerable to them, and that they should not be called from their avocations more than once a year to attend elections, the undersigned submits the two following sections for the action of the Convention :

SEC. —. There shall be chosen every two years by the electors at large of every city, a mayor, who shall be the chief executive officer thereof, and whose duty it shall also be to see that the duties of the various city officers are faithfully performed. He shall have power to investigate their acts, to have access to all books and documents in their respective offices, and to examine their subordinates on oath. He shall also have power to suspend or remove such officers from office, whether they be elected or appointed, for violation or neglect of duty, to be specified in the order of suspension or removal; but no such removal shall be made without reasonable notice to the party complained of, and an opportunity afforded him to be heard in his defense.

§ —. There shall be chosen every three years by the electors at large of every city, a comptroller, street commissioner and receiver of taxes and assessments, who shall have charge of the departments of finance, streets, and the collection of taxes and assessments respectively. There shall be such other officers in cities as the Legislature shall provide; but for this purpose cities may be classified according to population, and different offices provided for different classes. All officers for whose election or appointment no provision is made in this article, shall be elected by the voters of the city at large or of some division thereof, or appointed by the mayor, with the consent of the board of aldermen, as shall be provided by law. The manner of filling of all vacancies in city offices shall be prescribed by law. No city officer shall, during his term of office, hold a seat in the common council of the city, or in the Legislature of the State, and the acceptance of such a seat shall vacate his office.

HEN. C. MURPHY.

The minority report was also referred to the Committee of the Whole and ordered to be printed.

Mr. HARRIS—I desire to say that this report has been delayed a day or two for the purpose of enabling Mr. Opdyke to present a minority report. I had supposed he would be in before the reading of the report would be concluded; and I ask if he comes in before the session is over this morning he may be allowed to present his report.

Mr. E. BROOKS—I would say as a member of the Committee on Cities, that in the main I agree with the majority report which has been presented this morning. There are one or two articles,

and perhaps one or two provisions in some one of the articles to which I may dissent. I do not propose to present a minority report, but will present my views when the subject comes under consideration.

Mr. TAPPEN—I offer a resolution.

The SECRETARY proceeded to read the resolution as follows :

Resolved, That a committee of three be appointed by the President to inquire and report upon the subject of holding sessions of this Convention in the city of New York during a portion of the month of September.

The question was put on the resolution of Mr. Tappen, and it was declared lost.

Mr. MERRILL—I offer a resolution:

The SECRETARY proceeded to read the resolution as follows :

Resolved, That the debate on the report of the Committees on Finances and Canals be limited to fifteen minutes to each speaker after Monday next, excepting from the operations of this resolution the chairman of said committees.

The resolution giving rise to debate, was laid over under the rule.

The Convention then resolved itself into Committee of the Whole on the reports of the Committees on Finances and Canals, Mr. SMITH, of Fulton in the chair.

The CHAIRMAN announced the pending question to be the motion of Mr. Lapham, to substitute section 6 of the canal report.

Mr. VERPLANCK—Will the gentleman from Richmond [Mr. E. Brooks] give way for me to move an amendment?

Mr. E. BROOKS—Yes, sir.

Mr. VERPLANCK—I move to strike out from the first section of the report of the Committee on Finances, as follows: "Advances to the canal debt sinking fund and other canal purposes by taxation since 1846, and simple interest at five per cent, \$18,007,289.68," being lines ten, eleven and twelve of the first section. And I also move to amend the fourteenth line, which states the aggregate at \$39,414,971.90. By deducting the amount I move to strike out, so that the aggregate will read, \$21,407,682.32.

Mr. E. BROOKS—Mr. Chairman, when the committee rose last night, in consequence of an indisposition, from which I have not yet recovered, I was endeavoring to show the importance of the railroads of this State and of the country, and the great amount of merchandise, produce and products from its mines, as well as the great number of other articles, manufactures, merchandise, etc., which are carried by the railroads of this State. Sir, I think it important to draw the attention of the committee again, in a more condensed form, to the facts which I then stated. It is true that in transporting the products of the forest, the canals of this State have a very great advantage over the railroads, and also in carrying the minerals of this State, especially the article of coal. In regard to other articles the difference is very marked indeed, as will be seen by the following statement, showing the number of tons of each class of property carried on the canals during the season of navigation, in the year 1866, and on all the railroads in the State, from

the 1st of October, 1865, to the 30th of September, 1866:

Description of property.	Tons of each class carried on the canals.	Tons of each class carried on the railroads.	Total tons of each class carried on the canals and railroads.
Products of the forests.....	1,769,994	730,605	2,500,599
Products of animals.....	18,810	1,322,770	1,341,580
Vegetable food.....	1,763,931	1,581,785	3,345,716
Other agricultural products.....	3,319	445,480	448,799
Manufactures.....	302,341	1,019,382	1,321,623
Merchandise.....	179,878	1,334,768	1,514,646
Other articles.....	1,737,047	2,775,686	4,512,733
Total tons carried.....	5,775,220	9,210,476	14,985,696

THE COAL TRADE.

The coal tonnage of the New York canals, as will be seen from the following table, shows the number of tons first cleared on all the New York canals for each year, from 1850 to 1866 inclusive:

Years.	Tons.	Years.	Tons.
1850.....	80,127	1859.....	432,075
1851.....	112,277	1860.....	490,495
1852.....	145,296	1861.....	542,150
1853.....	225,507	1862.....	636,720
1854.....	275,162	1863.....	732,557
1855.....	290,775	1864.....	855,063
1856.....	368,348	1865.....	720,683
1857.....	344,729	1866.....	1,136,613
1858.....	335,176		

Now, sir, there has been a disposition in this Convention, almost from its meeting, to belittle the importance of the railroads of the State and of the country, and to magnify the canals at the expense of the railroads. Sir, I think I appreciate each of them according to their respective importance, and when I hear the gentleman who is chairman of the Canal Committee [Mr. Lapham], and his associate, the gentleman from Onondaga [Mr. Alvord], crying out "Monopoly!" "Monopoly!" "Monopoly!" in regard to these railroads, I am reminded, sir, of that same old cry raised in Great Britain, and there with good cause, hundreds of years ago, before the accession of the house of the Stuarts. It was the custom in those days for the government of Great Britain to sell to individuals and combinations the right to manufacture, the right to buy, the right to sell, and to give to persons and companies complete control over the trade of the government. The "Monopoly" became so odious, and so justly odious, under the reign of Queen Elizabeth that the people, including the barons and the great body of the British people, rose with one voice and demanded a change of what was then a despotic one-man power—a monopoly of that country. So bad was the system that in 1664, with the exception of the control of certain articles, all these laws of monopoly were swept off. There are no such monopolies in the United States, nor any monopoly corresponding to them. There are two great railroads in the State of New York—the Erie and New York Central.

They are rivals of each other. They are in frequent collision in regard to the price to be paid for the carriage of passengers through the State, and almost in constant collision in regard to what should be charged for freight. They have rival routes in the New Jersey Central, leading to the West, in the Pennsylvania Central, in the Baltimore and Ohio railroad, and remotely in the railroads leading from the city of Washington, by Lynchburg to the South-west in that direction. In prospect those rivalries will be much more important than they now are. Sir, they exercise a constant watchfulness, the one over the other, and it is not wise, it is not just, it is not fair, so to represent these great interests before the people of the State as to belittle them with the people. They are important carriers, and as I have said and have shown, they carry vastly more tons in amount, and more tons in value—for their freight is of a more choice and select character—than the canals of the country. I appreciate the importance of the canals and of the railroads, and it is my desire to preserve and protect the one and the other as their relative interests demand, and my hope is that their importance may also be appreciated by the people of the State and country. Sir, I alluded last night to what may be called the rival routes of the country, and, to show that I do not undervalue the canals of the State, and to show also that I am not unmindful of the lynx-eyed vigilance kept upon the commerce of this State through its canals by the great West, I desire to read an extract from the oldest leading journal of the State of Ohio, I mean the *Cincinnati Gazette*, in regard to the articles which have been reported by the Finance Committee and the Canal Committee in reference to the carriage of freight from the West to the East by the lakes and by the canals. These editors say, after quoting these articles and complaining of them, "that no enlargement will ever be made on these conditions," and they go on to denounce the whole proposition of the Finance Committee as hostile to the grain trade and shipping interests of the West. Now, Mr. Chairman, I admit the importance of these views, but I do not concur in them to the extent here stated, and, in passing, let me remark that of all the income which we have received through the Erie canal, amounting to so many millions of dollars in years past, that the western people pay a very large moiety of the canal tolls, and that these tolls are to this extent a burden upon the commerce of the West, and it is a very serious commercial question whether it is for our interest so to levy tolls upon our canals, so to put those restrictions upon the commerce of the West, as to exact from the western people as much in the future as in the past. Indeed, Mr. Chairman, I beg this Convention again to understand that we are to have no such easy communication with the West or in securing the products of the West in future time as we have had during the years which are passed. But let me pass on. Every body knows the progress made in the great Pacific railroad. It is one of the wonders of the world. When we know that within a few days past we have had communicated to us by the telegraph—another of the marvels of modern times

—the fact that the railroad had been completed from Sacramento to the Sierra Nevada, which is seven thousand feet above the level of the sea and three times the height of the Alleghanies and three times the height of the Catskills upon our own North river, and that this mountain has been scaled and tunneled for 666 feet, men working at both ends, entering it from the center and working through four faces, as it were, at the same time, we realize something of the railroad power, capacity and energy of the people of this country. When you turn to the eastern division of the Pacific road and find 355 miles of this work completed beyond Omaha in this direction, and at the rate of two and a half miles a day, notwithstanding the Indian depredations and all the destruction incident to an Indian war, we can realize as a great fact that within three years from the present time a man may take passage in the cars near the head-waters of the Hudson and in the space of a week find himself safely and most comfortably landed in a sort of board and lodging-house car by the Bay of San Francisco. Sir, this is what the whole enterprise of the country is doing by the aid of the government in this direction. Again, Mr. Chairman, there is the struggle for connection between this Pacific railroad by the northern route, via the State of New York, and by the central route, south of this State, and which is in direct rivalry with the railroads of New York. We all know that the northern communication is by the Erie and the Atlantic and Great Western, and by the New York Central and Lake Shore route, and so passing on to the West. But let us look at the subject from another standpoint, for it is here it has the most interest to us. The physical condition of the country, coupled with the great populations of Pennsylvania, Maryland, Indiana, and Illinois and so on to the West, have evolved a great rival system of consolidation, and I often think seriously of the great mistake made by this Convention a few days since, when it refused to permit consolidation of any State railroads, except with a limited capital. This power of consolidation is used by the Pennsylvania Central and the Baltimore and Ohio railroads, so that there are two grand organizations, two opposing armies, as I may call them, looking in a direction entirely adverse to us. It is, Mr. Chairman, a struggle for dominion, for commercial power and supremacy between the State of New York and its attaching interests, and a struggle for commercial dominion between the States of Maryland and Pennsylvania, and in some respects the State of Virginia, which, though stripped and shorn of power and capital as she is, is yet capable in the future of accomplishing most important commercial results. Now let us open the door that discloses this central route, as I have called it, or the southern route, as some call it. The latter is under the guidance and in the interest of the Pennsylvania Central and the Baltimore and Ohio railroads. What this combination claims, as I have said, is a direct way to the Missouri river, so managed as to be in reality one road, one grand avenue from Central Ohio to the Pacific, secured upon this end as I have also said, by the Baltimore and Ohio road, and by the Pennsylvania Central road. Time

and distance, we must remember, in our day are but mere expressions of opinion, for experience has shown us in times past that it is hardly a figure of speech to say that time and distance are annihilated by railroads. Why, sir, it is hardly a piece of rhetoric to revive the exclamation in the Arabian Nights where the Genii transported upon that wondrous carpet of his all the products of art and fancy placed upon it and bore them through the air over earth and sea in the twinkling of an eye, as it were, and to the end of space, passing mountains and valleys, custom-houses, inspectors, men and things, and with little or none of the paraphernalia of a civil government, and from one end of the earth to the other. I say it is hardly a fable or a fiction to realize this in our day and generation as a great and important fact. Sir, this is equally so in regard to population. Why, we remember that years and years ago, in poetic phrase, it was asked and said,

"Where is the North? At York, 'tis on the Tweed,
In Scotland, at the Orades; and there
In Greenland, Zembla, or the Lord knows where."

Now, sir, let us ask ourselves where is the West? Why, within the recollection of many living men the West was bounded by the lakes and the Ohio; but it is gone to Indiana, to Illinois, and to Missouri. It is in Kansas, it is in Nevada, and Dacotah. It has scaled the Rocky mountains by various passes; it has leaped over these mountains, and there is, as I have said, a railroad to-day from the summit of the Rocky mountains to Sacramento, and then steamboats to the Bay of San Francisco. Now, sir, it does not become us at all to slight the railroads of the country. I shall endeavor very briefly to show, that the railroads are to become the rivals of the canals of the country and that in time, perhaps not in our day, make the latter comparatively unnecessary. But I would not act upon this prospect now. It may be that for all time, for the heavier products of the earth, such as lumber and coal, the great carriage in this country will be by the canals. In regard to the Pacific railroad, again let me also say that when completed it may monopolize all the important transit between the far East and the West. Instead of one Pacific line, not many years hence, we shall have three to San Francisco, and ere long a railroad to Oregon. You know the government of the United States two or three years since made provision by liberal subsidies or grants of money for the establishment of a line of steamers passing from San Francisco to the East Indies, touching the ports of China and one or two ports in Japan. The dream of Columbus is to become true, that the route West is the way to the Indies. These vessels will bring the teas and silks of these rich and productive countries. The time is not far distant when these light and valuable products will cease to be borne around the capes and when they will be brought directly to California upon steam and sailing vessels, transported across the country and brought to our homes and doors for consumption, where they may again be transhipped on cars laden at San Francisco to the port of New York, or the port of Boston, certainly at the port of New York, a great deal cheaper, after they had been landed at San Francisco from these

steamers, than are received by the long voyages to the far East. Goods will be taken by the Pacific railroad to the port of New York even, and thence transhipped to Europe. I mean such products as teas, silks, and everything bearing a corresponding value. It will be possible to reach England in three weeks from San Francisco, and Hong Kong in thirty-three or thirty-five days. Now, sir, let me say again in regard to these railroads, that they increase the commerce of the country just as much as your canals, and I think I can show even more. While they expand this commerce they will also increase the imports upon which large duties are paid for the support of government. They will also increase the exports and thereby give very great value to both those who are engaged in foreign or domestic commerce. Sir, we can learn something yet, although we are a very boastful people, and it may be, a very intelligent people. We may learn from the experience of past and present time. I had occasion the other day to call the attention of members of this Convention to the railroad systems of Europe, and particularly to those in countries like Belgium, Holland and France. Let me say to the chairman of the Canal Committee, and to all the friends of the canals that the experience of railroads in governments like Belgium and Holland has been to reduce the price of canal freights one-third; and there is no such country in the world for canals, not even in this State, with its favored line of depression from the lakes to the head waters of the Hudson—there is no such country, I say, in the world for building canals as the two countries last named. In Belgium and Holland the effect of railroads has been to revolutionize the trade, and to change it from canals to railroads, and to cheapen freight to all classes of people. Sir, let me read an extract from a work in my hand, carefully prepared in France in regard to the railroads of Holland. But first in regard to Belgium:

Railways in Belgium and Holland.—Belgium is one of the most striking instances of the benefit of railways. In 1830 she separated from Holland, a country which possessed a much larger commerce and superior means of communication with other nations by sea and by canals. Five years later the total exports and imports of Belgium were only £10,800,000, while those of Holland were double that amount. But in 1833 the Belgium government resolved to adopt the railway system, and employed George Stephenson to plan railways between all the large towns. The law authorizing their construction at the expense of the State passed in 1834, and no time was lost in carrying it out. Trade at once received a new impetus, and its progress since that time has been more rapid than in any other country in Europe. The following table shows the activity with which the lines were constructed. We must remember that Belgium contains only one-tenth of the area of the United Kingdom, and that to make a fair comparison with our own progress we must multiply the table by ten.

MILES CONSTRUCTED.

Year.	Miles open.	Increase per annum. Miles.
1839.....	185	
1845.....	385	25
1853.....	720	46
1860.....	1,037	45
1864.....	1,350	78

Railway Traffic in Belgium and Holland.—This increase of Belgian commerce must be ascribed to her wise system of railway development, and it is not difficult to see how it arises. Before railways, Belgium was shut out from the continent of Europe by the expensive rates of land carriage and her want of water communication. She had no colonies and but little shipping. Railways gave her direct and rapid access to Germany, Austria and France, and made Ostend and Antwerp great continental ports. One of her chief manufactures is that of wool, of which she imports 21,000 tons, valued at £2,250,000, from Saxony, Prussia, Silesia, Poland, Bohemia, Hungary, Moravia and the southern Provinces of Russia; and returns a large portion in a manufactured state. She is rapidly becoming the principal workshop of the continent, and every development of railways in Europe must increase her means of access and add to her trade. Holland, in 1835, was possessed of immense advantages in the perfection of her canals, which are the finest and the most numerous in the world; in the large tonnage of her shipping; in her access by the Rhine to the heart of Germany; and in the command of the German trade, which was brought to her ships at Amsterdam and Rotterdam. The Dutch relied on these advantages and neglected railways. The consequence was that by 1850 they found themselves rapidly losing the German trade, which was being diverted to Ostend and Antwerp. The Dutch-Rhenish railway was constructed to remedy this loss, and was partly opened in 1853, but not fully till 1856. It succeeded in regaining part of the former connection. But now observe the result. In 1839 the Dutch exports and imports were £28,500,000, nearly double those of Belgium. In 1862 they were £59,000,000, when those of Belgium were £78,000,000. Thus while Holland had doubled her commerce, Belgium had increased hers fivefold and had completely passed her in the race.

It will be seen from this that when Holland found she was losing trade for the want of railroads, she established a system which contributed immensely to the value and amount of her commerce. Well, now, there is a general supposition that the cost of railway travel and movement is very materially larger in a country like this than it is in the United States, but this is not so, with the exception of first-class passengers. Freight is moved as cheaply in that country as in this. Second and third class passengers and even fourth class passengers are carried, and in some of them persons are carried much cheaper in these countries than in the United States. I wish now to say a few words with regard to the New York State debt. It was said by the gentleman from Onondaga [Mr. Alvord] that these county debts, those

city debts, which lay like a millstone upon us, were owned mostly by the people who were immediately interested in them, or by citizens of the county. It may be that in Onondaga the debt is owned by the people, and that for days the people come from the surrounding counties and beg, as he says, to secure some of these local, city or county bonds. Let me say to that gentleman his county is very fortunate in this respect. I represent one of the smallest counties in the State. There are only ten of smaller population out of the sixty odd counties of the State, and it is the misfortune of that people to-day to owe nearly nine hundred thousand dollars, and it is their great misfortune that a great portion of this debt, I may say nearly the entire debt is owned not by the people of that county. It is an enormous tax upon us. Sir, the people who do business in the city and county of New York also owe a debt to-day of thirty-four millions of dollars. Out of the eighty-nine millions owned by the cities and the counties of the State, the city of New York has the misfortune to owe thirty-four millions of dollars. It may be that a large portion of that debt is held by the people of that city, but whether so held or not, I regard it as a great misfortune that she should owe so much money. Let me say in passing, also, that I regard it as a great misfortune, and not at all necessary, that this State of ours should owe the great debt it does. Had we had a wiser administration during the war, more integrity, more State capacity and honesty, we should have owed no such debt as this. Sir, how happens it that the State of Pennsylvania during the war just closed, paid off two millions of her debt and owes so much less to-day than she did when the war commenced? How happens it that she has paid off nearly a million and three-fourths within the year past. How is it that the State of Ohio, the State of Indiana and the State of Illinois owe together six millions of dollars less to-day than they did six years ago when the war commenced. Sir, it was by a wiser and a more wholesome administration of the public service. It was by having more economical men in the council of the State. While we have been piling up our debts almost literally Pelion upon Ossa, they have been reducing the debt in the four large States to the extent of eight millions of dollars. Sir, I never believed in that maxim, sometimes so common as to pass into the currency of a proverb that "a public debt is a public blessing." I regard a public debt as a great public calamity, and while I would not abridge any appropriation of money necessary for a proper prosecution of public duties and public service, I would watch with the eyes of an Argus all appropriations of money, whether for one or another object; whether for the support of the government, or for internal improvements, which have abstracted so much of the revenues of the State from the pockets of the people and the treasury of the State. No, sir; a public debt is not a public blessing any more than a private debt is a private blessing. It is a great misfortune to owe money. The only satisfaction we have, and it is a very poor one, is the fact that in the ways and means we have, we are permitted

to pay off this debt in a currency of considerable less value than gold or silver. Mr. Chairman, in regard to the enlargement once more. If any gentleman upon this floor can demonstrate to this committee, or can demonstrate to the people of this State, that it is absolutely necessary for the commerce of this State, I will consent to tax the people to procure that result. Sir, has it been so demonstrated? Can it be so demonstrated? I have read all these reports. I have listened to all the discussions which have taken place during two days past, and with an interest corresponding to the importance of the subject. I read in the reports of your engineers that these proposed improvements to the extent asked for by the Canal Committee are not necessary. I read in the reports of your committee the great fact that the capacity of the canals of this State have never been taxed so as to injure the commerce of the State, except to the extent that the officers in charge of them have failed in the proper administration of their duties. Yet if it can be demonstrated that any such improvements are necessary I would forego all other conclusions saving only the credit and character of this State, and consent to impose an additional tax on the people for the desired end. I would do it for two reasons. First, because I know that the money expended for great public improvements, whether upon the line of the canals or whether upon the line of the railroads, comes back to the coffers of the treasury in larger means of taxation. I think that has been demonstrated in the history of the State of New York, whether you consider the lands on the southern line of counties upon the New York and Erie road, upon the Central road, or upon the lines of the canals. It would in such cases, perhaps, be a temporary burden, but in the end it would, in a pecuniary point of view, prove a public benefit. Therefore I say if it can be demonstrated that these improvements are necessary, I would not hesitate to make them. But I do not regard them in this light. I believe that with the means which we can expend upon what some gentlemen are pleased to call ordinary repairs, but to make what I might call extraordinary repairs, we may accomplish all that is necessary. I cannot, coming from the sea-board, say too much in favor of foreign commerce or domestic commerce. The last I regard as the very life blood of the American people. Sir, it includes agriculture, for what is agriculture without commerce? It includes manufactures, for manufactures is commerce. It includes everything in regard to trade which has locomotion and which is capable of consumption. Therefore I will never consent, as one of the representatives of the people, to do anything that can arrest the progress of the commerce of this State. I will always rather say, in the words of another:

"Bid harbors open, public ways extend,
Bid temples worthy of the gods ascend,
Bid the broad arch the roaring flood contain,
The mole extended break the roaring main,
Back to her bounds the subject sea command,
And roll obedient rivers through the land."

Sir, it is this spirit of venture, adventure and trust in Providence which has made the commerce of the United States. It has made the commerce of the State of New York, and I desire that it

may never be arrested. I believe that the canals, improved as they can be by a moderate expenditure of money (and I mean by moderate expenditure of money a sum less than three millions of dollars,) enlarge your locks beyond Montezuma, or will double your locks, if that be necessary, although I am told, and I wait for evidence upon the fact, that no necessity for such work can be found in any of the public documents, or in any of the testimony which has been produced. I wait, I say, for proof in regard to this. But for these bench-walls, some eighty in number, costing for their removal, I am told, seventeen hundred thousand dollars, and in regard to some aqueduct improvements as seen in documents, and which will cost the sum of two or three hundred thousand dollars, I am willing for one that the public should be taxed through the canal surplus revenues, or in any other way to accomplish this result. I may, therefore, propose, by way of amendment in the future of the discussion some such proposition as this, which has been loosely drawn, owing to my indifferent health, and I hope that some member may improve its substance, so that the plan will put it in proper shape, and presented it to the committee for adoption:

"That all the canal debts be consolidated by the government into one debt, to be known as the State canal debt, which shall be paid as it falls due, according to the provisions of the existing Constitution, but excluding the two hundred thousand dollars required from the canal receipts for the support of the State government."

Sir, I make this qualification because I do not think it right to tax the commerce of this State government; further, that the canal revenues, after the two hundred thousand dollars for the support of paying debts and interest and expenses as they fall due, shall be expended first in enlarging or doubling the thirteen locks west of Montezuma or in removing the wall-benches upon the eastern division of the Erie canal, as shall be deemed most expedient by those placed in charge of the canals: That the advances of \$18,007,289 to the canal debt sinking fund and other canal purposes raised by taxation since 1846, including simple interest at five per cent, be postponed until the above and all other improvements are made which may be deemed necessary to keep the canal in thorough order and repair: That to secure the foregoing provisions a sinking fund be set apart after 1868 of \$_____ per annum. In conclusion, Mr. Chairman, I think a provision like this, which may be called, perhaps, a compromise between the two reports which have been submitted, will accomplish all that is necessary for the commerce of the State and all that is now necessary for the canals of the State.

Mr. SCHOONMAKER.—Mr. Chairman, I rise, as one of the members of the Canal Committee, to take part in the discussion of the important questions now pending in this committee. Before proceeding to the main question, I desire to refer to some of the cobwebs which the gentlemen of the Finance Committee who have already spoken have endeavored to throw around the question. We have heard the chairman of the Finance Committee [Mr. Church] assert that it would be a

shame, a burning shame for this Convention to adopt or sustain the report of the Canal Committee, because it would be a repudiation by the State of her solemn pledges to her creditors. The gentleman from New York [Mr. Opdyke] and the gentleman from Delaware [Mr. Miller] have followed in the same wake and preached about a plighted and repudiated public faith. The gentleman from Delaware has gone so far as to allege that because the State has incurred the bounty debt she cannot, without a breach of public faith, improve her canals and put them in the order demanded by the commerce of the country. Sir, I am—and I know that every member of the Canal Committee is as earnest as the Finance Committee and any and every one of its members—in favor of the protection of the honor and credit of the State. For one, I will yield to no man in the extent of that feeling, but I look upon all this talk as used here about repudiation and violation of public pledges and public honor as nonsense and idle prattle. Whence do they argue that there is any plighted faith between the State and her creditors which the Canal Committee so ruthlessly repudiate? It is under the provisions of article seven of the existing Constitution. Section one provides that after paying the expenses of collection, superintendence and ordinary repairs there shall be appropriated and set apart in each fiscal year \$1,700,000 as a sinking fund to pay the interest and redeem the principal of the State debt called the canal debt as it existed on the 1st of June, 1846. The second section provides for the appropriation of the surplus canal revenues, after complying with the provisions of the first section, for another sinking fund, to pay the then existing general fund debt. The amendment of the Constitution adopted in 1854 provides for an additional sinking fund, to pay the enlargement debt, to be made after the other sinking funds are provided for. It will be seen that these debts provided for under the Constitution of 1846, were existing debts at the time of the adoption of that instrument, and the provisions of that Constitution formed no part of the original contract between the State and her creditors. Its incorporation in the organic law was an after thought, and had nothing to do with the original creation or continuance of the debt. Nor, is a Constitution in any sense a contract in relation to those or any other debts as between the State and her creditors? What is a Constitution? Is it a compact between the State and third parties? Is it a contract which the State makes between herself and her creditors? No, sir; it is simply a compact between the people of a State themselves, for their own convenience, protection and government, repealable and changeable at pleasure by the same power which made it. The contract between the State and her creditors exists only in the bond which she has issued and delivered to them. And so long as the State complies with the letter and spirit of that bond, and has the principal and interest ready to be paid at the times and in the manner required by that instrument, it is no business of the creditor as to where or whence the money comes. As I understand a Constitution, sir, it is a mere code of general principles upon which the

government is to be conducted. It sets forth and limits the authority of the representatives of the people in the administration of the government, and is not a contract and does not bear the form of a contract between the people and third parties. It is like a power of attorney from a principal to his agent, and is revocable and alterable at pleasure. The gentleman from New York [Mr. Opdyke] may go to his counting-room and direct his confidential clerk out of the daily profits of his business to set aside a particular sum daily to pay a debt to become due in the future; to-morrow he may recall that order and appropriate the money elsewhere. There was no contract between himself and his creditor thus to appropriate that money, and therefore there would be no breach of faith. All the creditor can ask is to have the money when it is due to him, according to the letter of his bond, and more than that he cannot ask; more than that he is not entitled to, and less than that we do not ask him to receive. Are the provisions of the Constitution of 1846 irrevocable and unalterable by the people without a breach of public faith on the part of the State toward its creditors? Why, sir, many of those debts existed before the Constitution of 1846 was in existence. And, besides, that Constitution bears upon its face the right to alter and amend at pleasure. If you cannot touch that security without a breach of public faith, upon what principle is it that these gentlemen of the Finance Committee assume to consolidate the sinking funds, and thus deprive the old canal debt and the general fund debt of their preferences under that Constitution and throw them into hotch-potch with other and later debts? The Finance Committee say, in their report, for convenience. For convenience, indeed! You may, then, alter and amend and postpone securities for convenience; but holy horror is aroused and excited, the specter of violated faith, and violated and disgraced public honor is pictured forth; because the Canal Committee propose to alter and change to meet a pressing necessity. That is, you may alter and change for convenience, if the Finance Committee assent to it. But for necessity never; no, never! Have I not properly characterized the doctrine as ridiculous? Then again, what has this question of taxation, and indebtedness, which has been piled up in such exorbitant figures, the correctness of which I will not investigate, to do with the question in discussion before the committee? We ask not for a dollar of tax—we do not propose to add a feather to the weight upon the camel's back. All we ask, and all we propose is that the canals shall, out of their own surplus revenues, be put in suitable condition and repair, to answer the demands of commerce, and yield large remunerative returns to her owners, the people of the great State of New York, and at the same time that they do this, make full and ample provision for the payment of every debt that may be a charge upon their revenues. I will now proceed; Mr. Chairman, to the discussion of the question immediately before the committee—and I conceive it to be one of the most important questions which will be brought before the Convention for their consid-

eration. It involves matters, vital to the internal improvement system of the State, and should have the careful and deliberate consideration of the Convention. In the proposed arrangement of the financial article, and the distribution of the canal revenues thereby, we are brought to the direct consideration of the question, whether the surplus earnings of the canals shall be so disposed of, and irrevocably tied up, as indefinitely to postpone, I may say prohibit, any expenditures upon the canals for the increase of their capacity. Whether, no matter what may be the experience of the future, no matter what may be the necessities of the present generation, or the demands of posterity, the canal revenues and the finances of the State shall be so hampered and bound as to be beyond the reach and control of the people. I for one, sir, do not believe that all the wisdom and financial intelligence of the past and future generation are concentrated in the present. I do not believe that it is proper so to arrange a financial article, as to take its control entirely away from the people. I do not believe that any constitutional provision, prohibiting improvements, the use of public revenues or the exercise of the taxing power should be so absolutely prohibitory as to take away from the people the power to order otherwise. I believe that the people in the present are and also the people in future generations will be competent to decide, when the question is properly submitted to them, what improvements should or should not be made, and how the expenditure shall be met, whether by loan or taxation. I did not, however, rise at this time to discuss those points, but simply to make some remarks in reference to the improvement of the canals, as to whether any portion of their revenues shall be retained and anticipated for their improvement, or shall their improvement be virtually prohibited. The Finance Committee have assumed the examination of these questions, in their majority and minority report and have discussed it upon the basis that it involved the creation of a new debt of \$12,000,000 and upward, and that the entire surplus revenues of the canals are needed, and must be inviolably appropriated to the payment of the existing obligations of indebtedness, and to refund into the State treasury the amount of money raised by tax upon the people, at different times, for the benefit of the canals, with interest. They claim that until this is accomplished, no moneys must be diverted to the improvement of the canals. In doing this, the committee appear to ignore the fact that the canal revenues are, and in all human probability will be in the future, sufficient to keep the public faith and meet all necessary expenditures. Neither do they appear fully to appreciate the fact that the ability or sufficiency of the future revenues to discharge the indebtedness, will depend upon the fitness and capacity of the canals so to meet the requirements of trade and commerce as to command the retention of their business. The demands of trade for accommodations are continually on the increase; the abundant facilities of to-day may not meet the requirements of to-morrow. But the gentleman from New York [Mr. Opdyke] professes that the city of New York and the mercantile interests of New York has

but little interest in the improvement of the Erie canal, and that her interest will be promoted by so tying up her revenues, as to prevent anything ever being done except mere ordinary repairs. Sir, where would New York have been to-day, if that narrow-minded, unstatesmanlike policy, had been adopted in times past? Before the Erie canal was built, Boston and Philadelphia were her successful rivals for ascendancy. And it is to the completion of the Erie canal, and to the great inland trade and commerce that she has thrown into the lap of the city of New York, that that city is indebted for the impetus in the march of prosperity and improvement which has placed her far in advance of her quondam rivals. The city of New York, and her merchant princes, may boast to-day of their independence of our great works of inland navigation, and may tell us that they have had their day, and their usefulness is at an end, and may leave them to neglect and ruin. That will not be the first time, sir, in the history of the world, that the pet and bantling has grown too large for its nurse and patron, nor is it entirely improbable that her ingratitude may, in the future, be mourned by the weeds and grass growing in deserted streets. Sir, it will not do for any city or commercial port, however prosperous she may be, to hamper and neglect any of the avenues or sources of her commercial prosperity. But the gentleman from New York [Mr. Opdyke] says our manufactures are growing, and soon we will not need European and foreign manufactures, and the export of the precious metals from this country will take the place of the export of agricultural products, and the business of the canals be thereby diminished instead of increased. Sir, I cannot see, neither do I anticipate any such result. The agricultural products of our country are more needed in the dense population of Europe than our precious metals, and will be in great demand so long as nature calls for sustenance. Gold alone will not feed the hungry or clothe the naked. In the examination of the questions involved in this discussion, embracing the wants and resources of the canals, it behooves us to inquire what are the present pecuniary demands upon our canal revenues, and in what condition is the canal to meet them. Has it the capacity necessary for the increasing demands of commerce, and to prevent a diversion and loss of trade? If it has not that capacity, what improvements are necessary, and what will be their probable expense, and whether the whole thing cannot be accomplished without the creation of any additional debt, and at the same time the public faith be perfectly maintained and secured. It is to an answer of these questions that I intend to direct my remarks. As to the pecuniary demands upon the canal revenues, they are set forth in the report of the Finance Committee as consisting of the old canal debt of 1846, the general fund debt, the canal enlargement debt, under the constitutional amendment of 1854, and the floating canal debt, amounting in the aggregate to \$21,407,682.22. These debts are to be paid out of the canal revenues. The three several items mentioned as canal debts, were loans made directly for the benefit of the canals. The general fund debt, mentioned

above, is the debt of the State, entirely disconnected from any expenditures upon the canals, and is the debt as it existed against the State at the time of the formation of the Constitution of 1846. It was composed in part of the stock issued by the State to and for the benefit of New York and Erie and other railroad corporations; the Astor stock and other State debts, amounting in all at that date to the sum of \$5,885,549.24. The Convention of 1846, in consideration of the canal, in its original construction, having received for a period of time, toward the payment of the expenses of its construction, the benefit of the salt duties, steamboat tax, vendue duties and avails of the sale of lands donated to the canal fund by large landholders in the West, determined to charge the canal revenues with the payment of that State indebtedness, as a compensation or return for the benefits thus received. The Constitution of 1846 therefore expressly required that debt, called the general fund debt, to be paid out of the canal revenues, and it has thus become a canal debt, chargeable upon the canal revenues, and it now amounts to \$5,642,622.22. The above debts, constituting the canal and general fund indebtedness, amounting in the aggregate to \$21,407,682.22, compose the entire State indebtedness for which the canals are in any manner responsible. The item of \$18,007,289.68, set forth in the first section of the report of the Finance Committee, as "advances to the canal debt sinking fund and other canal purposes, by taxation since 1846, and simple interest at 5 per cent.," has no place or business there in a recapitulation of the debts of the State; it is in no manner or sense a State indebtedness. The Constitution of 1846 provided that "every contribution or advance to the canals or their debt, from any source, other than their direct revenues, shall, with quarterly interest at the rates then current, be repaid into the treasury for the use of the State, out of the canal revenues, as soon as it can be done consistently with the just rights of the creditors holding the said canal debt." Moneys have been raised since 1846 by tax for advances to the canal debt sinking fund and other purposes, including the extension of the Chenango canal, and the improvement of the Champlain canal, to the amount of \$14,396,767.97, which, with interest, amounts to the sum stated by the Finance Committee. This is no debt, in any sense of the term. The constitutional provision is a mere declaration by the people, the owners of the canals, that the property improved shall at some future time, after the debts incurred on their account have been paid, reimburse the owners any advances which may have been made for them with interest. To postpone the reimbursement of that money into the treasury, in order that the canals may be improved, and their capacity for profit and business increased, is no breach of public faith or violation of the rights of the people. Talk about it being a violation of a solemn compact with the people! What will this Constitution be if it ever becomes a Constitution? Will it not be the act of the people? It will amount to nothing unless ratified by the people, and then if ratified it becomes a declaration of the

popular will. If, then, the Constitution provides for certain improvements, before the reimbursement into the treasury of their advances, its adoption will be a declaration by the people, the only parties in interest, of their approval; and who can deny their right to do so? The interests of the people and of the canals are identical, and the people know it. The Canal Committee, in estimating the future revenues of the canals, for the purpose of determining what expenditures can be safely incurred, and the public faith be preserved in the payment of debts, have assumed as the basis of their calculations a net annual revenue of \$3,000,000. It is based upon the average annual results for the last seven years. That average, in precise figures, is \$2,948,124.03. The auditor, in one of his reports to this Convention, states that average, and says that that average will probably be maintained "if the canals are not depleted in the future as they have been in the past." Those results for the past seven years have been realized, in spite of the enormous profligacy in expenditures. But with the inauguration of proper reforms in the care and management of the canals, and the introduction of a proper system of economy in expenditure, it is submitted that much more than the estimated amount will in all probability be annually realized. If such reforms do not create a saving of more than \$500,000 annually, I, for one, will consider them failures. The gentleman from Orleans [Mr. Church], in his remarks, stated that the surplus revenues of the current year will be about \$2,400,000. In that he is mistaken. They will amount, in all probability, to over \$2,800,000, notwithstanding the continuance during the past year of profligate and enormous expenditures. The amount, thus estimated, is sufficient to discharge the canal and general fund debts before they become due, and leave a surplus for the accomplishment of other necessary purposes. The estimate of revenue, however, is based upon the sufficient capacity of the canals, and their ability to keep up with the demands of trade and commerce. We have hitherto, to a great extent, retained the carrying trade to tide water; but the question arises, are we in a situation to continue its retention? When the canals were first constructed, a water-way of forty feet in width and four feet in depth was found sufficient to answer the purpose. But soon, that capacity proved inadequate to meet the increasing demands of transportation. The enlargement was commenced in 1835, and after many delays, hindrances and interruptions, was so far completed, as to enable boats of an increased tonnage to navigate them. The capacity of the boats were increased from 80 to 250 tons. When the enlargement was determined on in 1835, the dimensions of the prism of the canal was adopted for seven feet depth of water and seventy feet width of surface, the locks to be 110 feet in length between the quoins and 18 feet width of chamber. Those portions of the canals, which were constructed prior to the operation of the stop law of 1842, were given a width at the bottom of forty-two feet, and the side walls were not started from the bottom, but rested upon the earth a short distance from the bottom below the water-line. When the early completion of

the enlargement was determined on, in 1851, by the Legislature, the plan was so changed in the uncompleted sections, as to give a width of fifty-two and a half feet at the bottom, and to start the side walls from the bottom of the canal. Thus the sections of the canal enlarged prior to 1842 have ten feet less width at bottom and a consequent diminished capacity, as compared with those subsequently enlarged. Those sections of diminished capacity, exist principally on the eastern section of the Erie canal, where the increased capacity is most needed. The earth in those sections of the canal upon which the walls rest, and which diminished the size at the bottom to forty-two feet, when originally constructed, have since, by change of form and extent, through lapse of time and washing down by operations of the water, still more diminished the capacity of the canal at these points, and formed serious obstructions to their navigation. Those are the obstructions usually designated as wall-benches. It is wrong that such obstructions should exist in the eastern and most crowded portions of the canals, and that there should be there, by reason thereof, less capacity of prism than in the other sections. It is clearly the part of wisdom, that the necessary work for the removal of these obstructions, should be done, whatever else may remain undone. The expense of removing those obstructions and giving the prism of the canal at those points the proper capacity with slope wall from the bottom, as upon the other sections, is estimated to cost about one and a half millions of dollars. It is estimated that when the prism of the canal shall be thus improved and equalized throughout, its capacity will be sufficient to accommodate boats of from 500 to 600 tons burden. This estimate is confirmed by the uniform testimony of scientific and practical men who have been examined before the Canal Committee on that subject. This is more than double the capacity of the large boats now used. The clear chamber of the present locks, as I have before shown, being only 110 by 18 feet, will only admit boats of a capacity not exceeding from 225 to 280 tons measurement. Thus we have, on the Erie canal and some of its tributaries, locks adapted to the passage of boats of only half the capacity of those suitable for the prism of the canal. The substitution of other locks, adapted to the prism of the canal, will more than double the capacity of the boats, and consequently largely increase the carrying capacity of the canal. Now, the question arises, is that increase demanded by the wants of commerce and the requirements of the carrying trade? The Finance Committee assume the position that the canals have not as yet been worked up to their full capacity. They allege that the capacity of the Erie canal to do business has never been reached and scarcely approached. They quote the result of estimates made to that purport, and refer the Convention to examine for themselves the basis upon which the calculations have been made, not deeming it necessary to incorporate the details in their report. The calculations referred to are closet calculations, based upon the idea of allowing five minutes lockage to each boat, the boats all to be of the largest class, and the de-

livery of freight to be uniform day by day through the season. These calculations, like many other fine-spun theories of the closet, dissipate when brought to the test of practice. The first foundation of their theory is five-minutes' lockage. The testimony taken by the Committee on Canals of practical men, and the investigation made by the committee, under the order of the Convention, as to the actual working of one of the set of double locks, at Syracuse, in complete order and under favorable circumstances, establishes the fact that the five-minute basis of calculation is far short of the actual time taken. In the experiment at Syracuse, with diligent working and the aid of all requisite appliances, only seven boats, large and small, some loaded, others light, could be passed through the double locks in one hour; less than four to each lock, and thus averaging over fifteen minutes instead of five minutes to a single lockage. The lock-tender testified, that that was a fair average of what could be accomplished. I submit that, if that average only can be maintained in the day-time, under favorable auspices, certainly some additional allowances must be made for unavoidable delays, when working the locks in the dark and by lamp-light. It is said this cannot be a fair criterion; let us, in answer to that, theorize a little. The time actually occupied in filling or emptying a lock for the passage of a boat, is from three and one-half to four minutes. The calculation of the capacity, stated by the Finance Committee, is based upon the tonnage of the large sized boat. The entrance of one of those boats into the lock must necessarily be very slow. When entered it will nearly fill the entire chamber, and in entering it must necessarily displace and throw back a quantity of water equal to its own bulk. That, of itself, creates a very strong counter-current, and great resistance, which can only be overcome by very slow movement. The water has no chance to escape except by running back. It piles up in front and falls from its height by escaping along the sides and under the bottom of the boat. The nearer the size of the boat approaches the prism of the lock, the longer and more difficult is the escape of the water. The large boats, now, are within three inches of the entire width of the lock chamber, and six feet draft brings them within one foot of the miter sill. The difficulty of forcing water back through such a small space cannot be obviated by the increase of force, for should force enough be applied to enter with rapidity, such resistance would be created as to endanger the safety of the lock-gates and other structures. It may be said, diminish the size of the boats, so as to lessen resistance and expedite movement. That will not add anything to capacity, because what you gain in time is lost in the diminished tonnage of the boat. It may be true, as alleged by the auditor, "that the double locks have on certain occasions performed services equal to passing from one hundred and ninety-nine to two hundred and seventy-eight boats in twenty-four hours." That largest number is only equal to eleven boats and a fraction in one hour through both locks, and five and a fraction through one lock per hour, making over ten minutes' lockage.

There is no pretense in the auditor's report that that has been done for a whole day. That can undoubtedly be accomplished with small boats, but it is physically impossible to do it with large ones. So much for the estimate of lockage time, upon which the calculation of capacity is founded, as stated in the report of the Finance Committee. The other basis contemplates the delivery of freight to be uniform, day by day, throughout the entire season of navigation. Experience, and the course of trade, teach us that that never can be so, upon public works dependent for transportation upon the ordinary demands of commerce. Greater facilities are always required at some seasons of the year over others. There are the crowded, and there are the dull portions of the year, dependent upon the situations of the market, and the desire of the shipper to press his goods to their destination. Fully to meet the demands of commerce, the facilities for transportation must equal the demands of the most pressing portion of the year. It is not for the transporter to dictate how or in what proportions, monthly or weekly, the products shall be forwarded, but he must be prepared to meet the demand whenever it comes. Produce from the West is pressed forward for shipment most rapidly, when it is most needed and the market is most favorable. Examine the table of lockages at Alexander's lock, three miles west of Schenectady, and which, by canal officials, is adopted as the test lock to determine the trade on the canals, it will be found that the number of lockages monthly vary in every year from less than three thousand in some months to over five thousand in others. They are not, as the gentleman from Orleans [Mr. Church] has stated, so remarkably uniform. In order to arrive at the uniformity stated by him, he does not take the lockages at a single lock, so located as to show the actual monthly commerce, but he takes thirteen locks, located at different points, and gives the sum of the monthly lockages at all these locks, which cannot form any proper criterion. The statement of the lockages at Alexander's lock, for the past and many previous years, will be found on page 287 of the auditor's last report on the tolls, trade and tonnage of the canals, and shows a variance in the lockages in different months from about three thousand in some months to over five thousand in others. This monthly variance must clearly demonstrate the proposition that, in estimating the capacity of the canals to meet the demands of trade, it is not proper to compare the amount actually carried with the whole amount that could have been carried if pressed day by day equally through the season. The true test of capacity is, whether the facilities are sufficient to meet the demands made upon the canals at the most pressing portion of the year. If the facilities are of such character that during the active seasons of the year the demands of trade cannot be answered, and produce is turned aside to seek other channels, then the capacity of the canals to meet the wants of trade has been reached. If shipments are blocked periodically at the pressing season of the year, it will not be long before accommodations will be sought on rival routes. Once block the channel of trade

and divert it elsewhere, force the shipper to new associations and to new arrangements, and you cannot tell or anticipate when or how you will again draw or entice him into the old and accustomed channels. The shipper wants facilities by which he will be accommodated in the crowded as well as the dull season of the year. The foundation then upon which the estimate of the Finance Committee is based is fallacious. One of its theories is falsified in practice, and the other is repudiated by the well-understood tendencies of commerce and commercial transactions. The Committee on Canals have investigated this question, and under the direction of the Convention, taken the testimony of scientific and practical men—men well versed in the commerce of our canals by actual experience. The testimony thus taken, although not entirely uniform upon the point, is nevertheless conclusive upon the fact, that in 1862 the canal was taxed to its full capacity, and that it has been also thus taxed during the pressing seasons of other years, and that annually much produce is driven to other routes by reason of the inability to have it forwarded over our canals when needed. In further confirmation of this position, and as corroborating the testimony of the witnesses above referred to, let us examine certain data furnished in the auditor's report of tolls, trade and tonnage of the canals for the year 1866. In his table, at page 287 of that report, showing the number of lockages at Alexander's lock, the test lock, situate three miles west of Schenectady, it appears that in 1862 the number of days occurring between the opening and the closing of the canals in that year was 224. The whole number of lockages during the year was 34,977, which makes a daily average of 156 lockages during the entire season, without making any allowances for suspensions by reason of breaks or any other cause, and an hourly average of six and a half lockages during the entire season. Now, taking the year 1866, we find that there were 226 days between the opening and the close of navigation in that year, and 29,882 lockages, which makes the daily average of one hundred and thirty-two and two-tenths lockages during the entire season, and an hourly average of five and a half lockages. Again, in the year 1862, the greatest number of lockages in any month was 5,376 in the month of July, which makes a daily average of one hundred and seventy-three and four-tenths lockages during the month, and an hourly average of seven and six-tenths lockages. In the year 1866, the greatest number of lockages in any one month was 5,104 in the month of August, which makes a daily average of one hundred and sixty-four and sixty-four hundredths, and an hourly average of six and eighty-six hundredths lockages during the month. It is true, there were a greater number of lockages in 1853 and some other earlier years, but those were the days of small boats, which were locked through with much greater rapidity than can be done with the large ones. Take, now, the testimony of the actual working capacity of the locks, as shown by the investigation of the committee, as before referred to, being seven lockages per hour, and compare it with the actual annual and monthly lockages as given by the auditor,

and above referred to, and they fully verify the oral testimony before the Canal Committee, that the Erie canal is now, during at least a portion of every year, worked to its full capacity. If the conclusion, at which I have now arrived, is correct, and I submit that the evidence produced and referred to fully justifies it, then it follows, as a necessary consequence, that the present carrying capacity of the canals is not sufficient to meet any increased tax upon their powers. We know that this country does not stand still, that it is ever progressive, and that the demand of facilities for transportation from the great West eastward is constantly increasing. That commerce and trade are ever demanding that the facilities for their accommodation shall keep pace with their wants, and if their demands are not met, other channels will be brought into requisition. Trade and commerce, when running in their ordinary channels, are slow at changing, except for the want of sufficient accommodation, but when once driven off to other routes, by the want of proper facilities, they are still slower in returning. Under such circumstances, I submit: whether it is true policy, at this day, in establishing our organic law, so to tie and lock up the finances of the State, as virtually to prohibit forever the improvement of our canals out of their own revenues, and deprive the people of the ability to place them in a proper condition to meet the increasing demands of the country. But the gentleman from Orleans [Mr. Church] says there is a way of doing it, by borrowing money under one of the sections of the financial article, and then providing a tax upon the people to pay it. We are opposed to placing any unnecessary burdens upon the people, and repudiate the idea of taxation for improvement, and choose to leave the canals to improve themselves out of their own revenues. But then, he complacently says, if that will not answer, you can hereafter get an amendment of the Constitution. Why go through all that formality of prohibition now, to create the expense and trouble of opening and changing it in the future? A Constitution should be made to meet emergencies, and to stand, and not to be altered and amended. The next question I propose to consider is, what improvements are needed, and what will be the probable expense. We have, as I have before stated, a canal with a prism sufficient to accommodate boats of 600 tons, but the locks are barely sufficient for boats of 250 tons measurement. Under such circumstances, the manifest improvement required is, to accommodate the locks to the prism of the canal, and make them sufficiently large to pass boats of 600 tons measurement. Some of the aqueducts will also need widening, to admit the passage of the enlarged boats. By these means, in common with the removal of the wall-benches, to which I have heretofore referred, the carrying capacity of the canals will be at once nearly doubled. Upon the point as to the probable expense, the Committee on Canals have taken much testimony, and have not only examined the State Engineer, but also some of the most distinguished engineers and contractors in the country. From such testimony, it appears that the locks can be enlarged and re-

built upon the Erie, the Oswego, and the Cayuga and Seneca canals, so as to give a tier of enlarged locks their entire length for \$4,000,000, and that the entire cost of all the necessary improvements will be less than \$7,000,000. The Finance Committee base their conclusions upon an expenditure of \$12,000,000, alleging a probability that the expenditure will double that sum. But the allegation of the Finance Committee is based upon an estimate made some years ago, contemplating additional and more expensive improvements. That estimate contemplated the building of an entire tier of new and enlarged locks of 26 feet wide by 225 feet long, being 25 feet longer than the locks as at present proposed, alongside the old ones, leaving the old ones standing. The proposition now is to build new locks only 200 feet in length out of the materials of the old ones, as far as practicable, and upon the site of the old ones. The estimate referred to by the Finance Committee also contemplated and included the expense of deepening the prism of the canal for its entire length one foot, and in some places changing the location of the canal, and thus incurring much additional and unnecessary expense. It is also well understood that that estimate was made particularly in view of an application to the general government, and was therefore made upon a large and liberal, and not an economical basis. Charles B. Stuart, a distinguished engineer, and who was formerly our State Engineer and was the United States consulting engineer appointed by the President to inquire into the construction of gunboat locks in 1863, was examined by the committee, and he gives the basis of the calculations upon which the building of the enlarged locks were made; the calculations were made by him in conjunction with the State Engineer. He says the locks were estimated at 26 feet wide and 225 feet long, and to be entirely new locks of those dimensions. He estimated in his testimony the building of an enlarged lock 200 feet long out of the present double locks at \$40,517 each. W. J. McAlpine, formerly State Engineer, in his testimony, estimates the locks at \$40,000 each; and W. W. Wright, a large and competent contractor, testified that he would be willing to take the contract for building them at that price and give satisfactory security for the performance. Sylvanus H. Sweet, formerly deputy State Engineer, and who assisted in the estimate of the gunboat locks, estimates the cost of the locks as at present contemplated at \$42,804 per lock. Upon such testimony as this, and others of a like character, the Canal Committee based their estimate that the 100 locks will cost about \$4,000,000, and the entire cost of the improvement be less than \$7,000,000. The amount provided for in the proposed constitutional article, is \$8,000,000, leaving a margin of \$1,000,000 to meet unforeseen contingencies. It is said, however, by the gentleman from Orleans [Mr. Church], that this is only the entering wedge for other and still greater improvements, that with enlarged locks an increased water-way will be called for. Suffice it to say, that all that is called for now, and all that is needed, is the enlargement of the locks; let us leave the further necessities for future time and future generations. It is a poor argument to

refuse to do what is needed now, because additional improvement may by possibility be called for in the future. Would the gentleman from Orleans [Mr. Church] refuse to put a new roof on a leaky house, because, forsooth, it may in a few years' time require new window-sills, floors, plastering, or additions? So much for the statement of the Finance Committee upon the probable amount of the contemplated expenditure. The next question for consideration is, can the whole thing be accomplished without incurring any new or additional debt, and at the same time keep the public faith with the creditors of the State. That is the precise object which the Canal Committee design to accomplish in the article reported by them, and they believe it practicable. It is not worth while for me here to go through a detailed statement of the figures and process by which its probable accomplishment is proven, they can be found in detail set forth in the report of the Canal Committee, and will challenge criticism. It is enough for me here to say that those figures, based upon the expenditure of the past, show that the proposed improvements can be made out of the surplus canal revenues, without incurring any additional debt, and meet all the obligations of the State, for which the canal revenues are responsible, as they respectively mature, and the entire amount be paid and discharged by the year 1879, only one year later than that designated by the Finance Committee for their discharge. Some small deficiency loans for a very short period, may become necessary to meet a portion of the debts maturing in 1874, but they will all be paid off and discharged out of the canal revenues in 1876. But it may be, and I have heard it said, you are calculating upon years of prosperity; and the report of the Finance Committee intimates that pestilence and famine may overtake us, and the revenues for a year or more be annihilated. All that is possible, sir. It is not given us to look and pry into the future, and foresee such extraordinary emergencies, we can only govern and control ourselves by the experience of the past, and anticipate the smiles of a favoring Providence. I am not one of those, sir, who, anticipating misfortune, are ever hanging their harps upon the willows and standing idle, lest ruin may overtake them. But I am for advancing, harp in hand, and if misfortune comes, meet it as best I can, trusting a kind Providence to open the way for deliverance. There is now, and I believe always will be, sufficient latent energy and elasticity in the people of this State to sustain themselves under and quickly recover from the blighting effects of any severe providential dispensation which may be in store for them. It is not the part of wisdom to act upon any other supposition, certainly not to frame a Constitution as if pestilence, famine and ruin were at the door demanding admittance. It may also be said that the Canal Committee have estimated the receipts at too large a figure. The Finance Committee place them at less than \$2,500,000—being \$500,000 annually less than the Canal Committee. Both committees are estimating for the future, neither can claim to know. One committee looks on the dark, the other on the bright side of the picture. I, for one, have no

doubt that the estimate of the Canal Committee will come within the bounds of what will in fact be realized in the future. I believe, sir, that if the improvements in the canals, as recommended, are completed, the revenues will be largely increased by the greatly increased facilities for transportation. Carry also in effect the needed reforms in the administration of the canals; cut off illegal claims against the State, as recommended by the committee; stamp upon the forehead of the claim agents "Ichabod, Ichabod, your glory is departed," and more than half a million of dollars will be annually added to the net canal revenues. But suppose that the revenues do fall a little short of \$3,000,000 annually, that will only prolong a little the day of payment, it will not bankrupt the State and forever postpone the payment of its debt, neither will it necessitate taxation. I may as well here, as anywhere express my entire dissent from that provision in the third section of the financial article, as reported by the finance committee, which provides for taxation to supply casual deficiencies in the revenues to meet the required annual contribution to the sinking fund. It is time enough to tax, if necessary, when the time for payment to creditors arrives, and not burden the people with taxation to increase the deposits in a bank, at a low rate of interest, under the name of a sinking fund. The next year the deficiency may be fully supplied by increased revenues, and the sinking fund may be abundant without taxation before there is any necessity for its use. If there is a deficiency, when the time of payment arrives, the powers which then exist may be able, by loans in anticipation of future revenues, to relieve the people from any tax. At any rate the power to accomplish that should be left for them to pass upon. I believe, sir, that the financial article should be so arranged that the people can, whenever the commerce of the country and the interests of the State demand it, make the proposed or any other improvement of the canals out of their revenues without resort to taxation, whether they are necessary now or may become necessary in the future. But, it is alleged, the State has no right to use any of the revenues for that purpose; that those revenues are inviolably pledged to the payment of the public debts, and that no portion thereof can be diverted without a breach of the public faith, and upon that the changes have been rung again and again. It is true we have no right to destroy the security of the public creditor, but it is equally true that it is our duty to improve and maintain it. Permissive waste and destruction is as culpable as active and direct destruction. Whenever the demands of commerce and the interests of trade require the improvement, if it is not done a diversion of trade must necessarily follow; with that diversion our revenues must correspondingly diminish. Whatever the gentleman from New York [Mr. Opdyke] may think, it is the dictate of common sense that we are not in a position of entire independence so as to be able to say to the West, "You are obliged to come in this direction, and you can choose no other;" but they have the choice of different routes; ours is preferable if properly cared for, not otherwise. It is the duty of the State, and

our duty as representatives of the State, to protect the credit of the State, to protect the public faith and the public creditors by placing and maintaining our canals in such situation as may be necessary to protect and increase our revenues. That duty certainly cannot be discharged properly by permitting our only source of revenue to become antiquated and insufficient to answer the purposes of commerce, and thus be hampered in its ability to produce revenue. That, certainly, cannot be construed into a wise or statesmanlike operation for the protection of the creditor, as it inures directly to the destruction of his security. That is the direct and inevitable tendency of the report of the Finance Committee. They indefinitely, and I might say forever, virtually and, indeed, directly prohibit any moneys being used or anticipated for the improvement of the canals, until they have, out of their annual revenues, accumulated and paid into the treasury \$40,000,000 (in round numbers), besides accruing interest. I cannot subscribe to the statesmanship of that position. I believe our duty to the public creditors, our duty to the people of the State, requires and demands that our future revenues should be protected, and not sacrificed; that we should not, to accumulate a dollar, lose and sacrifice hundreds. The cry of want of good faith and due regard of the rights of the creditors of the State may, with much greater propriety, be applied by the Canal Committee to the Finance Committee, than by the gentleman from Orleans [Mr. Church] to the Canal Committee. The Canal Committee seek to secure the creditor by preserving and maintaining the efficiency of the works upon which his security rests. The Finance Committee would leave them to become dilapidated and antiquated, and behind the improvement of the age. But, it is said, make the improvements, if they are necessary, by tax, as provided in the fourteenth section of their article, but do not touch or divert the revenues for that purpose. That is, in plain English, borrow money by vote of the people, and at once burden the people with a direct annual tax to pay the interest, at six or seven per cent, as it becomes due, and to pay and discharge the principal of the debt within eighteen years. For my part, I am opposed to adding any more burdens by direct taxation upon the people. How does this proposition of the gentleman from Orleans [Mr. Church] comport with his great array of figures in reference to an overburdened and overtaxed people? I cannot see or dive into the depths of the wisdom of that financial policy which will borrow money at six or seven per cent on loan, to be refunded by taxation, while it has an abundance of money not needed for immediate use lying and accumulating in the banks at four per cent interest. That does not appear to me to be the policy which would govern a shrewd financier or business man in the ordinary business transactions of life. But it is said that thus use a portion of the revenues, and the sinking fund may fall short. I think it will not; but suppose it does, then, when the necessity has thus arisen, is the proper time to loan or tax, as may then be deemed most advisable. Again, it is alleged in one of the minority reports emanating from the Finance Committee, that the

canals have, in a great measure, fulfilled their mission, and that railroads are superseding them in every section of the country. It is true that railroads have in some respects very great and decided advantages over the canals. They can run at great speed, and during the entire season. But on the other hand in cheapness of transportation, the canals have greatly the advantage even with their present limited facilities. The enlargement of the canal actually cheapened transportation fifty per cent, and it was estimated by scientific and practical men, in their testimony before the Canal Committee, that the proposed enlargement of the locks will still further diminish the expense of transportation by 50 per cent upon the present cost. The estimate of the State Engineer, as given on page 134 of his report, made in 1864, produces the following result: Cost of transportation per ton per mile, by the old boats, before the enlargement, was 4 14-100 mills; by the present boats it is 2 16-100 mills per ton per mile, and by the proposed large boats will be 1 4-100 mills per ton per mile. This is exclusive of tolls. The actual cost to the railroads of transportation by rail, is variously estimated on different roads, from one to two cents per ton per mile. The difference in the actual cost of transportation, as thus exhibited, between canal and railroad transportation, at first blush appears almost incredible. But the surprise vanishes when we reflect that our enlarged boat of 600 tons burden, with five horses and a crew of five men, will transport as much grain to market as two full railroad trains, consisting of thirty cars each. Is it in fact surprising that the cost of transportation per mile, by a single boat, should be estimated at only one-tenth part of the expense of two heavy railroad trains, each nearly one-quarter of a mile in length! Ten such boats arriving daily at tide-water, will bring to market as much produce as twenty railroad freight trains. What railroad is there in the country of any great length, which can run more than that number of freight trains per day, without interfering with their passenger traffic? The inference to be drawn from these facts is, that railroads cannot entirely supersede the canals, for they can neither compete with them in cheapness of transportation nor in capacity. Again, the conclusion arrived at by the author of that report, that railroads are superseding the canals in every section of the country, is not a very logical deduction from the established fact, that our canals are now taxed to their full capacity, and that, at certain seasons of the year, freight is forced to other channels by reason of insufficiency of accommodation. Nor is it any better or more correct logical conclusion, from the allegation in the report itself, which is set up as authority for that deduction, in the following words: "the freight, including tolls on all of our canals, the last year, as appears by the auditor's report, was \$10,160,051. During the same year, the receipts for carrying freight on the Erie and New York Central roads were \$21,282,943." That is the allegation, now what does it prove? Simply this, that the freight earned upon the canals in 226 days of transportation (taking the full number of days

from the opening to the close of the canals, without any deductions for breaks or detention), at low canal prices, was about one-half as much as that received, upon a high freight tariff, by the Erie and New York Central roads combined, during 365 days of transportation on each, equaling 730 days transportation on both roads. The gentleman in drawing his report cannot surely have given much reflection to the bearing of his figures before he inserted them. To the distinguished chairman of the Committee on Finance [Mr. Church], and to the authors of the several minority reports from that committee, permit me to say that they may rest easy upon the question of the reduction of tolls to a standard only sufficient to keep the canals in repair. They may rely upon the fact that the people of the State at large, having been taxed and burdened, not only in times past, but even now on their account, look forward and anticipate the time when the debts shall all be paid off by the canal revenues; and that these great works of internal improvement will then exist, not for the benefit of Rochester, Orleans and Buffalo only, but as a valuable estate, the revenues from which shall relieve the people of the entire State from the burdens of taxation for the support of the State government. I have thus directed attention to some of the questions involved in the discussion of the necessity, cost and expediency of the proposed improvement, and the manner in which it can be accomplished without incurring any additional debts, at the same time that the public faith is fully preserved. I will now only add in conclusion, that I hope the Convention will give the matter an unprejudiced and careful consideration, and that whatever else they may do, they will not so tie up the revenues, as to make them wholly inaccessible to the people, for long years to come, any further than may be absolutely necessary for the protection of the public creditors. As the question of the reform in the care and management of the canals is not now under consideration, I have not entered into any discussion of the probable increase of their net revenues by change of management. That question I intend to discuss at the proper time and shall then enter fully into an exhibition of the present system of canal management, its abuses and corruptions, and their remedy, and their effect upon the net canal revenues.

Mr. ANDREWS—Mr. Chairman, I shall detain the committee for a time in stating my reasons for opposing that policy in respect to the enlargement of our canals which is contained in the report of the Canal Committee upon that subject. And, sir, I rise with exceeding embarrassment to speak upon this question, because I come from a section of the State whose interests are, and always have been, closely identified with the canal system of this State, and the city in which I reside owes its growth and its present prosperity in a great measure, to the impetus which has been given to it by the Erie canal, which passes through its midst. Through that canal, that special industry of ours has been protected and promoted. Through it we have been enabled to distribute throughout the State the product of our salines, which have resulted in benefit to

the State at large, and in securing, and promoting our own prosperity; and no less interested in the Erie canal than the city in which I reside, is and has been the country contained within the territorial limits of the county of Onondaga. I am embarrassed for this reason in speaking upon this question, but I am also embarrassed for the reason that I am brought in conflict, with the many able gentlemen of this Convention, who are members of the Canal Committee, and who united in this report, but that I stand in opposition to my very distinguished colleague [Mr. Alvord], a gentleman from my own county, whose ability has been shown here, as heretofore in other places, in the discussion of this question of the canals, and for whose views I entertain the highest regard. But, sir, I am constrained to oppose this proposed policy, because I do not believe, from such examination as I have been able to give to it, that it is dictated by any present or near necessity, or by the demand either of the commerce of this State or the commerce of the West. I oppose this report, conceding, if you please, the necessity of the enlargement, on account of the particular scheme proposed by this committee, through which this enlargement is to be effected. If an enlargement of the Erie canal is necessary for the commerce of this State or of the West, I am personally in favor of it at any expense, at any cost; but I am not willing to go to the people of this State for an indorsement of the policy of enlargement, upon a suggestion that the work is to cost but eight millions of dollars, when I believe—and the reasons therefor I shall soon proceed to state—that such an enlargement as is proposed will cost at least double the amount which in this article we say to the people is amply sufficient for the purpose. I am not willing to go to the people upon this question, deluding them as to the cost of the work upon which they are asked to enter. And here I desire, Mr. Chairman, to exonerate, completely and fully, this Canal Committee from any such intention in making their report. They are men of the highest character, and I have no doubt they fully believe the statements which they have presented as to the cost of this enlargement. But, bound to act as I am—and as every other member of this committee is—upon the best lights which we can command, I am constrained to differ with the committee as to the estimates of the work which is proposed. Now, what is the estimate made by this committee, and on what basis? We are told in the report of the Committee on Canals that the cost of this work will not probably exceed \$6,644,314. The cost of what? The cost of enlarging the locks on the Erie and the Oswego canals; and not only that, but included in this sum is the amount of \$300,000 for the enlargement of the locks upon the Champlain canal and the cost of enlarging eight or ten locks on the Cayuga and Seneca canal, 100 in all. In the year 1863 a careful estimate was made by the State Engineer, under the direction of the Legislature, of the cost of enlarging one of the present locks on the Erie and Oswego canals alone. Another estimate was made at the same time of the cost of building a distinct tier of locks adja-

cent to the present ones, and of deepening the canal one foot. In the report of Mr. Taylor, State Engineer, in 1863, we have the cost of this work of enlarging one of the present locks estimated at \$10,943,199.75. Yet the committee propose not only to do the work embraced in that estimate, but also to expend \$300,000 on the Champlain canal and enlarge eight or ten locks on the Cayuga and Seneca canal for the sum of \$6,644,000. More than that, Mr. Littlejohn, who is recognized throughout this State, not only as a very able man, but as one thoroughly acquainted with the canals of the State, no longer ago than last winter, presented to the Legislature of this State a report, in which the estimate for this work is \$10,009,373.75. Why is it that this rebate of cost of nearly \$4,000,000 has occurred between the estimate of the Canal Committee of last winter and the estimate of the Committee on Canals of this Convention? More than that. The estimated cost of this enlargement, as I understand it, does not include the cost of constructing six weighlocks upon the Erie and Oswego canals, which are in addition to the one hundred locks upon the Oswego, Erie, and Cayuga and Seneca canals, provided for by the committee. Why is this item of expense, not less probably than half a million of dollars omitted from this estimate? I find, on examination of the evidence taken by this committee and submitted to this Convention, that Mr. Goodsell, our State Engineer, testified that the cost of those one hundred locks would be \$65,000 a lock, adding to the estimate of the committee \$25,000 for each lock, or \$2,500,000 for the locks alone. I know, sir, that in answer to questions asked him by the chairman, or some other member of the committee, whether the materials of the old locks could not be used, he said they might to some extent, and allowed for the use of that old material about \$6,000 a lock. When referring to the testimony of another engineer, Mr. McAlpine, taken before the committee, I find that he states that it would cost more to use the old material than it would to furnish entirely new material for the construction. I do not know who is right or who is wrong; but before I can vote in favor of a fixed and imperative policy, saying that these canals shall be enlarged and fixing the cost, I want some clearer and more definite statement upon which my judgment can be grounded. Moreover, Mr. Goodsell was asked whether the use of hammered stone instead of faced stone would not make a difference, and he allowed a difference of five or six thousand dollars a lock for that. Yet, when I refer to the testimony of Mr. Stuart and Mr. Van R. Richmond, in this same book, I find they say it would be impolitic and improper to use hammered stone; and that, in their judgment, the additional cost of faced stone would not be nearly equal to the increased advantage of using stone as it has been heretofore used in the construction of our locks. I am no engineer; I am no contractor; I have no practical knowledge of the subject of the cost of construction, but yet I, as one of members of this committee, am asked, in view of such contradictory and conflicting evidence, to say that in the year 1863 the work of enlargement shall be

commenced, and to assure the people that it shall not cost to exceed eight millions of dollars. Now I am utterly opposed to going to the people with a provision in the Constitution that the total expense of all such improvements shall not exceed eight millions in the aggregate, when it seems to me clear, beyond all reasonable doubt, that that sum cannot nearly equal the expenditure which will be required. We had, in 1862 what was called a "stop and pay" policy. I had no part in the political discussions of that day, but I am convinced from my reading upon the subject that that policy which arrested the movement of a great State in the midst of the prosecution of a great public work, was unwise, and subjected the State to great loss and inconvenience. It abandoned to decay partly finished structures which had to be restored when the work of enlargement was resumed. But there was a remedy there. The Legislature had the right to undo what they had done, and to recommence the work which they had abandoned. But by this article of the Constitution, proposed by the committee, we put eight millions into this work, and no Legislature can add one dime to the expenditure for the purpose of construction, and no debt can be contracted therefor. Suppose it should turn out, when the money has been expended, that the work is unfinished, what are we to do, with eight millions of dollars invested in the improvement, and with a constitutional prohibition against any increased expenditure? It would be a stop and pay policy, not by the act of the Legislature, but in the organic and unchangeable law; or else it would result, after having spent eight millions of dollars in the work in compelling the people who supposed that was to be the extent of the cost to proceed to amend the Constitution and to provide by loan or taxation for the raising and expenditure of more money in order to make the work available. But we are not without experience upon this subject. The committee say that the estimates before were altogether too large. The experience has been that estimates have always been too low. Take the estimate made in 1853 by this same Mr. McAlpine, who was then State Engineer in this State, of the entire cost of completing the canals provided for in the amendment to the Constitution of 1854, and which estimate was made in anticipation of that amendment.

Mr. LAPHAM—I would like to have the gentleman point the attention of the committee to any instance in which the estimated cost of constructing a lock has been found less than the actual cost.

Mr. ANDREWS—If I take the estimate of Mr. Goodsell as to the cost of constructing a lock, these one hundred locks will cost, as I have shown, \$2,500,000 more than the estimate of this committee.

Mr. LAPHAM—That is not the question.

Mr. ANDREWS—What I say is just this: that you have got an estimate making these locks cost \$2,500,000 more than the report to this Convention.

Mr. LAPHAM—That is an estimate which includes other things than the cost of materials and of construction. The question I ask the gentle-

man is this: Where does he find an instance, in the whole history of the canals of this State, in which it has cost any more to build a lock than the estimate of the engineer. My object is this: All these variances between the estimates of engineers and the actual cost relate to the construction of channels where there is hardpan or quicksand; and all the elements enter into the cost of construction.

Mr. ANDREWS—Well, I have no such confidence in the estimates of engineers, either as to embankments or as to locks, for I see before me most wide and marked discrepancies in the estimates for this very class of work to which the gentleman refers. I am not able to go back or to select from the estimates made for previous work the precise sum estimated for a lock; but when I take the aggregate estimates for these improvements, and show the enormous discrepancies between those estimates and the actual cost, then I say it is hardly safe to say that you can do work for less than the engineer's estimate. This same Mr. McAlpine, in 1853 or 1854, in estimating the work for the enlargement of these four canals, estimated the entire cost at \$10,162,682.90. I should say that there should be added for the Genesee Valley canal about \$500,000, which was not included in that estimate. Mr. Clark, who succeeded him as State Engineer, made his report to the Legislature in 1855, after the State was committed to the work of enlargement; and his estimate of the cost of that enlargement was \$13,500,000. I desire to read from the report a single statement upon that subject:

"This sum is submitted as my estimate of the cost of completing the work provided for in the amendment of the Constitution; and with a watchful regard for the public interest on the part of the legislative as well as the executive department of the government, I believe it amply sufficient to accomplish the object contemplated in the amendment."

And yet it appears from official documents presented to this Convention that the State has paid, since 1854, for permanent construction on these four canals, aside from interest and the cost of ordinary repairs, the sum of \$21,186,218.56, and that nearly the whole of this amount was paid for work performed prior to the appreciation of prices in 1862. In addition to this, as appears by the report of the canal appraisers, hundreds of claims for damages on these canals growing out of the enlargement are yet unsettled, and by referring to the testimony, it will be seen that Mr. Goodsell and Mr. Littlejohn both state that the enlargement authorized is not yet completed. Now, the point of this argument on my part is simply this: If I believed the work contemplated by this committee was necessary, I should cheerfully and earnestly urge its immediate prosecution, because I believe that the return of benefit to this State would fourfold repay any expenditure which we might be called upon to make. But doubting as I do, disbelieving as I do, either that the work is necessary or that it can be done for anything like the sum estimated by this committee, I say that we should not go to the people of this State and ask them to adopt this article of the Constitution, upon the suggestion

that the extent of that expenditure will be eight millions of dollars. Another difference between the estimate of the Canal Committee and the estimate of Mr. Taylor in 1863 is this: Mr. Taylor embraces in his estimate an allowance of \$1,067,151 for "engineering and contingencies." There is no allowance for any such expenditure in this report. The honorable gentleman from Onondaga [Mr. Alvord] said there would be no engineering. We have abolished the office of engineer, and he says it is not necessary to have any. But it is "engineering and contingencies" estimated by the State Engineer in 1863 at more than one million of dollars. Have we abrogated "contingencies" also? Now, one word further on this subject, to see what is omitted in this report and estimate. The evidence is that with the proposed enlarged locks and the large boats, it would be impossible for them to pass each other at various points where the short curves of the canal occur. Mr. Goodsell says there is one point at Little Falls where the expense would be very large, if that difficulty were to be overcome. Yet I find nothing in the report or in the estimate of the committee covering any such expenses. We all know that it would be perfectly impracticable to fit the locks for large boats, and not adapt the entire prism of the canal for the purpose of such passage. Mr. Goodsell also states that from Montezuma to Albany the canal is not seven feet in depth. And it is notorious where I live that the level on the canal, known as the Jordan level, extending eighteen miles west of Syracuse, is not seven feet in depth; and yet we must have, according to the report of the committee, to accommodate the large boats a depth of seven feet of water. I submit that it will require the bottoming out of the canal for that whole distance in order to make it of the depth required, and which was contemplated by the law under which the enlargement, was inaugurated. I am opposed to this report on another ground. I am opposed to it because it provides that this work shall be commenced in the year 1868, withdrawing from the Legislature of the State all control over it, and imperatively requiring that in that year the work shall be commenced and prosecuted to its completion. I am opposed to this provision because, from the examination and thought I have given to the subject, I am wholly unconvinced of the necessity for such an immediate improvement. On the contrary, I am convinced that there is no present or near necessity which requires any enlarged capacity to the Erie canal. I want to point to one thing that has not been very prominently brought out in this committee, and as to which I think the gentleman who last addressed the Convention rested under some mistake. We have had propositions to enlarge one of the present locks, leaving the other lock to stand for the accommodation of the boats of smaller tonnage. Unless I wholly misunderstand it, the proposition of the committee now is to take up the present double lock and to substitute in its place but one single enlarged lock to do all the business upon the canal. Mr. Alvord asks a question of

Mr. Stuart, "Did each of your calculations include the necessity of leaving either of the present locks untouched?" "The proposition is to take up both." That is the proposition; not to make one enlarged lock leaving the small one by the side of it, but to make the only facility for the passage of boats through the canal, the one enlarged lock which is to be substituted for both. I will now proceed to state, as briefly as I can, consistently with the importance of the subject, my justification of the position which I have asserted, that there is no necessity created by the wants of this State or by the demands of the Western states upon us, for the enlargement of the locks on the Erie canal. The special committee has made a report, which has been presented to the Convention, of their observations at what is known as the Syracuse lock; and have stated that from actual observation at a time when there was plenty of water, and boats crowding in each direction, and no lack of attention on the part of the boatmen or of the lock-tenders, both locks fully employed, were able to pass only seven boats in an hour, equal to one hundred and sixty-eight boats in the twenty-four hours. Arguments are based upon this observation that the maximum capacity of the Syracuse lock under the most favorable circumstances is one hundred and sixty-eight boats a day. Yet I find, on referring to the report of the auditor, from returns filed in his office that in the month of August, 1862 the average daily lockages for that month at the Syracuse lock were one hundred and ninety-eight, at a time when boats were pressing in both directions, and in a year when there was the greatest through tonnage that had ever passed upon the canals of this State. For some reason the Syracuse lock has been selected as the test of capacity. I admit and I do not suppose it will be controverted, that ordinarily the capacity of any double lock is the capacity of all the double locks. It may be that there are peculiar circumstances which make one lock inferior to another in respect to the passage of boats. Perhaps it was because the Syracuse lock was the most difficult lock on the whole line, that that lock was selected, for observation. The greatest embarrassments occur at this lock, for the reason that the Erie canal west of Syracuse has already received the tonnage and the burdens coming from the Cayuga and Seneca and from the Genesee Valley canals, and at a point a very short distance from the lock itself, it receives the large and increasing tonnage of the Oswego canal. More, that the weigh-lock is immediately at the junction of these two canals, through which many of the boats have to pass.

Mr. SCHOONMAKER—I will like to ask the gentleman whether the same boats, with the same tonnage, do not pass through the locks eastward?

Mr. ANDREWS—They do; and it will be found upon examination that at the Frankfort lock, just east of Utica, there is no such thing known in ordinary cases as crowding of boats for lockage. Indeed, in the year 1862, three hundred and ten boats were passed at the Frankfort lock in a single day. There is another

reason why the Syracuse lock is an extremely unfavorable test of the capacity of double locks upon the canal; the quantity of grain which comes by sail vessels down Lake Ontario to Oswego from week to week is very variable. The vessels are often collected and detained outside the harbor for days by unfavorable winds, and when favorable winds arise they are brought in together. It is known to the boatmen, and when the vessels are there, the boatmen crowd to Oswego, and crowd back again with boats loaded with grain, on the way to the city of New York. So there could not be any more unfavorable test, as to the capacity of these double locks than the test of the Syracuse lock. The committee say that you cannot pass at that lock more than eighty-four boats each way in a day, with the closest attention and under the most favorable circumstances. It may be known to members of the Convention that every lock-tender upon the Erie canal is required every month to return to the canal department a sworn statement of the number of lockages made each day and each way, through the lock where he may be located. I have taken the pains to go through with these statements relating to lockages at the Syracuse lock, which are not found in any of the documents which have been printed and laid upon our table. I have taken the year 1862, as the most unfavorable one, there being then the greatest pressure of freight of any year during the history of the canals, and I find that in that year there were passed at the Syracuse lock on days in August, September, October and November, the number of boats indicated in this table:

Lockages at Syracuse Lock.

1862.	Total Number.	Passing East.	Passing West.
August 3,	238	123	115
August 4,	252	135	117
August 23,	234	149	85
August 25,	233	154	80
September 2,	208	110	98
September 9,	240	128	112
September 10,	221	145	76
September 14,	231	133	98
September 22,	236	132	104
October 3,	215	75	140
October 7,	230	115	115
October 8,	230	117	116
October 31,	242	112	130
November 6,	214	111	103
November 22,	230	186	44

Mr. KERNAN—At which lock was that?

Mr. ANDREWS—At lock No. 49, at Syracuse. In 1861, there were passed at that same lock in one day, two hundred and thirty-five boats, and there have been passed at that same lock in one day, two hundred and sixty-six boats. Yet we are asked to enter upon this scheme, and to spend \$20,000,000 for the purpose of enlarging these locks, upon the idea that the maximum capacity of lockage each way at this lock is eighty-four boats a day. I submit that under thorough and proper management, when our locks are put in the best repair, and when

our canals are in the charge of efficient and honest officers, the maximum practical capacity of that lock in the city of Syracuse is not less than two hundred and fifty lockages a day; for you have exceeded that number in one day by sixteen, even under the present management, and you have nearly come up to it on several days in several months in the year 1862. If this is so, a still larger practical capacity exists in respect to the locks further toward the sea-board where there is less embarrassment.

I have a table of the greatest number of lockages on any day in each of the years 1862, 1863, and 1866, at the locks indicated therein:

	1862	1863	1866
Alexander's lock,....	256	264	266
Lock 32, Fort Plain,.....	310	278	233
Frankfort lock,.....	305	252	235
Syracuse lock,.....	252	195	162

I want right here, as it occurs to me, to answer a suggestion made by the gentleman from Richmond [Mr. E. Brooks] who seems disposed to favor the improvement of the canal, and says that it might be well to enlarge the locks west of Syracuse. If that gentleman will refer to the tables, he will find that last year there were 25,193 lockages at the Syracuse lock, and only 19,764 at Lockport, and still fewer at Black Rock. The truth is that lockages diminish as you go westward, necessarily, because west of Syracuse it is the tonnage upon the Erie canal alone, and not the added tonnage of the lateral canals which is to be accommodated.

Mr. PROSSER—I would like to ask a question if it will not interrupt the gentleman.

Mr. ANDREWS—No, sir; I will hear the gentleman's question.

Mr. PROSSER—I would inquire of the gentleman if he is aware of the fact in the year 1862, to which he has alluded, and in the lockages to which he has alluded, what was the draft of water which the boats were allowed to draw?

Mr. ANDREWS—I do not know.

Mr. PROSSER—I will state that it was five and a half feet instead of six. And I will state to the gentleman that at Rochester in that year, where the largest cargoes are, coming from Buffalo, they average 182. For a few days at Rochester the average is 221. I will then ask the gentleman to state, or to give his opinion as to the average comparative time between the two, one running six inches nearer the miter-sill than the other, with forty additional cargoes.

Mr. ANDREWS—Those are abstract questions, Mr. Chairman, which I shall beg leave to decline to answer; and I will leave it to the gentleman himself to show the bearing and the pertinency of these questions upon the point I am now discussing. There is another thing I want to press a little farther about the Syracuse lock. I want to show what amount of lockage has been demanded at the Syracuse lock, and I have a statement here, showing the average eastward lockages daily at that lock in each month from August to November, both inclusive, in each

year from 1860 to 1866, showing the greatest number:

	August.		September.		October.		November	
	Gr't No.	Daily av.	Gr't No.	Daily av.	Gr't No.	Daily av.	Gr't No.	Daily av.
1860....	123	84	113	80	113	90	134	80
1861....	94	54	120	88	160	93	168	97
1862....	149	86	132	107	147	92	186	101
1863....	99	69	112	66	121	74	125	84
1864....	101	64	114	73	95	64	108	64
1865....	117	68	96	66	100	66	125	77
1866....	107	72	96	66	86	68	142	76
Ave'ge.		71		79		78		82

I have also a statement showing another thing. This statement shows the total number of boats locked at the Syracuse lock in each month of navigation in 1862, and shows that there were more in June than in any month in the year, except in the month of September.

	May.	June.	July.	Aug.	Sept.	Oct.	Nov.
	5,240	5,694	5,402	5,050	5,935	5,591	5,073

I have also taken the pains to divide the lock-ages, so as to show their direction and how the business on the canals is distributed:

Table of Lockages at Syracuse Lock in August, September, October and November in each year, from 1860 to 1866, both inclusive, and showing the lockages in each direction.

		1860.		August.	Total.
Eastward.....			2,606		
Westward.....			2,398		5,004
			September.		
Eastward.....			2,690		
Westward.....			2,264		4,954
			October.		
Eastward.....			2,786		
Westward.....			2,497		5,283
			November.		
Eastward.....			2,435		
Westward.....			1,966		4,341
For the four months.....					19,582

		1861.		August.	Total.
Eastward.....			1,673		
Westward.....			1,710		3,383
			September.		
Eastward.....			2,034		
Westward.....			2,170		4,204
			October.		
Eastward.....			2,913		
Westward.....			2,589		5,502
			November.		
Eastward.....			2,902		
Westward.....			2,457		5,359
For the four months.....					19,048

		1862.		August.	Total.
Eastward.....			2,680		
Westward.....			2,370		5,050
			September.		
Eastward.....			3,224		
Westward.....			2,711		5,935
			October.		
Eastward.....			2,552		
Westward.....			2,739		5,291
			November.		
Eastward.....			3,036		
Westward.....			2,037		5,073
For the four months.....					21,649

		1863.		August.	Total.
Eastward.....			2,143		
Westward.....			2,220		4,363
			September.		
Eastward.....			2,031		
Westward.....			1,777		3,808
			October.		
Eastward.....			2,294		
Westward.....			2,110		4,404
			November.		
Eastward.....			2,516		
Westward.....			1,613		4,129
For the four months.....					16,704

		1864.		August.	Total.
Eastward.....			1,989		
Westward.....			2,150		4,139
			September.		
Eastward.....			2,205		
Westward.....			1,814		4,019
			October.		
Eastward.....			1,984		
Westward.....			1,914		3,898
			November.		
Eastward.....			1,907		
Westward.....			1,195		3,102
For the four months.....					15,158

		1865.		August.	Total.
Eastward.....			2,112		
Westward.....			1,702		3,814
			September.		
Eastward.....			1,973		
Westward.....			1,606		3,579
			October.		
Eastward.....			2,061		
Westward.....			1,766		3,827
			November.		
Eastward.....			2,312		
Westward.....			1,572		3,884
For the four months.....					15,104

		1866.		August.	Total.
Eastward.....			2,253		
Westward.....			1,935		4,188
			September.		
Eastward.....			2,006		
Westward.....			1,751		3,757
			October.		
Eastward.....			2,014		
Westward.....			1,759		3,773
			November.		
Eastward.....			2,284		
Westward.....			1,376		3,660
For the four months.....					15,378

Gentlemen are mistaken, as the records show, in the assertion that although the aggregate number of lockages is about the same in each month, that in the first part of the season they are mainly one way, and the last part of the season the other; but on the contrary, the lockages each way are very nearly equal throughout the entire season. We, have in the special report of the Canal Committee, a letter from Mr. Selye, canal superintendent at Syracuse, written April 5, 1861, in which he says:

"Should the business of the canal require the passing of more tonnage through these [Syracuse] locks than was passed last fall, you must increase the capacity of the locks, otherwise be content with what was then done."

Upon reference to the tables of tonnage, it appears that in 1862 the aggregate tonnage of all the canals exceeded by a million of tons the tonnage of 1860, and by 700,000 tons the tonnage going eastward to tide-water upon the Erie canal in

1860; and yet the committee say that this prophecy of Mr. Selye has been most amply verified! Now let us see what is the actual capacity of these locks, tested by what has been done. It is said that although they could pass four or five millions of tons each way during the season, that it is not a fair view of the case, because the pressure of lockages is at the very close of the season. I have already shown that the facts and figures effectually controvert that position. In one month, the average lockages at the Syracuse lock were 198 a day, and the season was 226 days. Boats of a tonnage capacity of 250 tons, can now navigate the canals. If 198 boats had passed the locks each day in the season of 1866, averaging 220 tons of freight each, the whole tonnage carried would have been 9,264,560 tons; if 250 boats a day then the tonnage would have been 12,430,000 tons. Taking the difference between 168 boats a day, which the committee say was the greatest capacity, and 198 boats locked daily in August, 1862, and you could carry upon the additional 30 boats during the season 1,491,000 tons. Yet we are told here that the Erie canal lacks capacity, and that we must proceed with this scheme of expenditure to accommodate the great and increasing pressure from the West. I am a friend of the Erie canal, but I am not in favor of encouraging any job which shall involve the people of this State in a great debt and in a large expenditure when I believe that no necessity therefor exists. Now, let us examine the question in another view. Suppose the committee carry through their project and that it shall be approved by this Convention, we have a single lock in place of a double lock. We can only pass 84 boats a day, we are told, each way through the small locks. It is but fair to say, especially in view of the evidence of Mr. McAlpine, that it will take one-third more time to lock through a large boat through the large lock than is now taken for the lockage of a boat of the present size. When, therefore, they have all the boats to be locked through the single lock I want to know how it will increase the capacity of the canal. You have boats of double the tonnage, it is true; but you have a lock that will only pass one-half as many boats.

Mr. PROSSER—But they pass through two at a time.

Mr. ANDREWS—But do you run boats in couples down the canals? I suppose you do not mean to say that two large boats can be passed through at the same time?

Mr. PROSSER—No, sir.

Mr. ANDREWS—I suppose not. Upon the assumption that all the boats are large, then you have just double the capacity of tonnage with half the capacity of lockage. More than that: you cannot drive these small boats off the canal. It will be ten years before the hundreds of small boats floating upon this canal will be destroyed or driven from the canal. Have not you to furnish a lockage to every one of these small boats? Are they to be turned away from the locks, or shall a boat, when it reaches the lock, be required to wait until another shall come up, in order to make both lockages at the same time? So that the plan of this

committee practically diminishes the capacity of the locks one-half, if all the boats are of the largest size, but much more than that, as you have to provide for the lockage of these small boats, which will take nearly as much time as the lockage of the larger ones, and will require even more water. I was astonished to find we were not to have this double-lock system, I could then see, if we really needed to add to the capacity of the canal, or to enlarge the locks, that we should still have the small lock to accommodate the small boats. But I am surprised that gentlemen can claim that the capacity of the canal is increased by substituting for the double locks a single one. I can see how investments in propellers, at one end of the line or the other, might be very profitable; but I cannot see, however profitable you make that business, how you are to increase, by such a plan, the actual carrying capacity of the Erie canal. We are to have here a large single lock. Admit that you can make just as many lockages through one lock as you can through two; will this accomplish the object sought? In other words, is the enlargement of the locks the extent of the improvement necessary in order to accommodate the large boats? or will it be necessary also to enlarge the prism of the canal? I have examined that subject in the light of the evidence presented to me, to wit, the testimony taken before the Canal Committee. Mr. Littlejohn says that he *thinks* you would not have to enlarge the prism of the canal. He says:

"My impression is that, with the enlargement of the lock and removing of the bench-walls, boats of six hundred tons can and will navigate the canal with steam as it now is; but if we should err in that, I still say, enlarge the locks and try it, and if the prism is not large enough, enlarge the prism hereafter."

But he says further:

"I believe, if the State understood her interests, she would widen the prism also ten or fifteen feet, in order to make the friction less and the movement easier."

I will refer also to Mr. McAlpine's testimony. He says:

"The enlarged boats you propose would not be as well adapted to the channel of the canal as the present ones."

"Q. The question was, whether, in your judgment, there is any practical difficulty in the way of navigating the canal with boats of the large size? A. In reference to that, I say no, not at all, sir, with some little qualifications; there may be some little alterations that need to be made; for instance, I know in some parts of the canal I have constructed, of some very sharp turns I have in my mind now, near the aqueduct."

They would have to be taken out.

Mr. Goodsell, our present State Engineer, is asked on page 44 of this testimony:

"Q. What is your judgment as to the capacity or sufficiency of the present channel, aside from that portion where the bench-walls have not been taken out, for trade adapted to the enlarged locks? A. I think the water should be increased one foot in depth, the side walls taken out and put down with a slope of one and a fourth to one."

His idea is that you would have to enlarge the prism before you could use the boats, after you had enlarged the locks. I will call attention also to the testimony of Van R. Richmond, on page 53:

"My judgment is that the present channel would be too small for that sized lock, still boats could navigate it except on the curves; there would be places where two of those long boats could not pass, and a good many such places, as I understand it."

Also to the testimony of Mr. Taylor, on page 57.

"Q. What is your opinion as to the feasibility of using the enlarged lock with the present prism of the canal? A. I think it could be done; if the canal was to be new entirely, I would prefer a greater width of prism; there would be no particular difficulty except in the particular spots that have been mentioned."

You have hesitating words upon the part of those that speak at all for it, and who think that it could be done. Some say that it would require an enlarged water-way, and others that if the whole work was to be new the prism should be enlarged. There is no satisfactory evidence before this committee that the canal, with its present prism, could be navigated by steam vessels. I had heard before coming here that there was a canal called the Delaware and Raritan canal, in the State of New Jersey, where boats were propelled by steam. I expected to find evidence as to the capacity and the actual working of that canal. Not a word of it do I find in the testimony presented by this committee. On the contrary, from what little inquiry I have been able to make, I find that at the surface it is ten feet wider than the channel of our present canal. I find also that the great amount of tonnage in that canal is in vessels not exceeding two hundred tons burden. Why is this? We are left without information upon the subject. That canal passes through a substantially level country, and the banks formed by the excavation rest against the adjacent earth, which makes it less probable that there should be breaches in it; whereas, I know that upon the Erie canal the embankments in multitudes of places are raised above the height of the adjacent land, making breaches possible—nay, probable—and occasioning, as they have done heretofore, immense damage, and necessitating immense outlay. It seems reasonable to suppose that the movement of boats twice the size of the present ones at increased speed, would subject the banks to much greater pressure, and occasion still more frequent breaches. It is the opinion of Mr. Littlejohn that steam vessels could go from two to two and a half miles an hour; canal-boats towed by horses go one and a half miles an hour; a saving, by the use of steam, if steam can be used, of possibly one-third the time between Buffalo and Albany. But who does not believe that the passing of two steam vessels of six hundred tons burden, and with but six or eight feet between them and on each side, would create an immense strain upon the banks of the canal, and that the action of the water upon the banks would be apt to create far more difficulty than we now have? Are we, then, to

provide for enlargement, so that we can use steam and thus gain in rapidity of transit? Are we to do this without any evidence substantially as to the adaptation of the canals to such a use? I think the question is right here. If there is any way by which we can greatly diminish the time of transit between Buffalo and New York, we shall thereby add to the tonnage of the canal, because I believe experience has shown that, in the business of transportation, time is the great economy to be attained, and that this is far more important than the mere saving of expense in tolls and freight. I have already tried to show that there is enough actual capacity to carry the volume of tonnage which now comes, or which for many years is likely to come, to our canals seeking transportation. I submit that my colleague, the gentleman from Onondaga [Mr. Alvord] established beyond all controversy that there never could be any substantial competition in respect to cost of transportation between the canals and railroads. I am confirmed in that by a single statement I have taken from the auditor's report for 1866, to wit: that the tons moved per mile in New York on the Central and Erie railroads for that year were 809,561,319; and the amount on the canals was 1,012,448,034 tons; a difference in favor of the canals in the amount of tonnage of 200,000,000 tons. Yet the charges of these railroads for carrying the freight amounted to \$20,282,943, while the expense of carrying the larger quantity upon the canals, including tolls and freight, was only \$10,160,051 or about one-half the cost of the transportation of the smaller amount upon the railroads. I submit to gentlemen that if it should be true that with the large boats, the cost of freight would be reduced without any reduction in time, the effect will not be to attract to the canals any material increase of tonnage. But I believe that if you can get any material increase in speed, this is an economy which will attract to the canal a large portion of freight which is now carried by railroads. I have waited to see where the evidence was on which we could base the belief that any economy of time was to be secured by enlarging the locks upon the canals according to the plan of this committee. We have the auditor's statement in 1867, which I have here, in reference to the reduction of tolls in 1858, 1859 and 1860; that the reduction of the tolls did not tend to increase the tonnage upon the canals, whereas the tonnage upon the railroads increased during these years. We are told that those who oppose this scheme are in favor of monopoly. I deny it, and I deny that the judgment of any man in this Convention is to be determined by any such suggestion. I think we cannot disregard the actual facts, nor is it just to say that the judgment of the gentlemen who believe that it is not wise or expedient to enter upon the work of enlargement is founded upon the fact that they are in favor of the railroads and opposed to the canal interest of the State. Let us see what the course of trade develops in respect to business of transportation as between the canals and railroads of the State. The total tonnage in 1853 upon the New York and Erie and New York Central railroads, was 991,039

tons, and upon the canals for the same year it was 4,242,353 tons; a difference of four to one in favor of the canal. In 1866 there were carried upon these railroads 4,844,989 tons, and upon the canals 5,775,210 tons; a difference of five to four in favor of the canals. There is an immense difference in the relative increase of the tonnage carried by these two species of conveyance, between the years 1853 and 1866. We are told that unless we provide for an immediate enlargement of the canals, rival routes will be created and operate to our disadvantage; that at the North and at the South they will spring up, tending to withdraw property and trade from our commercial center. I do not so underrate the natural advantages which belong to our territorial and commercial position. When I look upon the map I find that the great basins of the Mississippi, of the Ohio, and of the lakes, are shut off from the Atlantic by the Alleghanies, excepting where, on our western border, they fall off into the level plains which extend through the center of our State and which connect with the vast stretches of territory which bound us on the west. I observe that we have an uninterrupted lake navigation of 1,500 miles from the western terminus of Lake Superior and Lake Michigan to that point at the foot of Lake Erie. I do not believe we are required to make expenditures in advance of public necessity, in order to control or to keep the carrying trade of the country. We stand by our physical position in the very track of western commerce. We may destroy that commerce by obstructing the avenues through which it will naturally enter our State and reach the commercial metropolis. We should be most unmindful of our own interest, and of the obligation which we, as a State, owe to the whole family of States, if we should fail or neglect to supply all necessary means of transportation for the purpose of introducing and leading that commerce through our State to the sea-board. The gentleman from Onondaga [Mr. Alvord] said that unless we enlarge our canals manufactories will be built up in the West and they will consume their own products. I doubt whether this suggestion accords with the enlarged and comprehensive patriotism of which the gentleman, for another purpose and at another time, spoke, when, considering this State only as a part of one indivisible Union. I doubt whether we should very rigidly seek to exclude the noise of the workshop and loom from the place where the sower sows the seed, and the reaper reaps the ripened grain. The gentleman showed us how little could be done by the railroads in competition with the canals; but in another part of the argument we are affrighted by the spectacle of the Baltimore and Ohio railroad, the Pennsylvania railroad, and the railroads leading through Canada, which are to divert and destroy our trade. Yet in 1854, when the completion of the enlargement was authorized, the tonnage carried over all these avenues of exit from the West, including the Canadian and Pennsylvania canals, did not equal within 40 per cent the tonnage carried on the canals of New York; and the western business done on the New York canals was three times as great as the aggregate

business of all the other lines. I have, perhaps, trespassed upon the patience of the committee too long in the remarks which I have made upon this branch of the subject. I have desired to indicate as clearly as I could my own convictions upon this question. I do greatly distrust my own judgment. I have not been familiar in the past with the practical operations of our canal system. The most I know is what I have learned during the progress of these discussions, and upon such examination as I have been able to make of the subject since the commencement of this Convention. I must say that the result of this discussion and examination has brought my mind to a directly opposite conclusion from that of the gentleman from Ontario [Mr. Lapham]. I am not in favor of this report from the Canal Committee, but I am utterly opposed to the report of the Finance Committee upon this subject. What does that report ask us to do? It figures up the debt of this State, for which the canal revenues are pledged, at about \$21,000,000, and it adds to that a liability, as it is called, of \$18,000,000, which is the amount, with interest thereon, which, since 1846, has been paid by taxation for the benefit of the canals of this State. It then declares that, first, there shall be paid out of the accruing revenue from the canals those special debts held by our creditors; and then that this eighteen millions of money, with interest at 5 per cent, shall be paid into the treasury, until the entire debt or liability is extinguished; and then the tolls shall be taken off—although I believe that final provision is only contained in the report of the gentleman from Monroe [Mr. Clarke]. What are we to pay? Let us understand it. Is it only \$18,000,000? No; when the debt of \$21,000,000 is paid we are to pay the debt of \$18,000,000 and the interest upon it at 5 per cent per annum. The interest itself is a million a year; so that if it takes eleven years to pay the first debt, the debt of \$18,000,000 becomes a debt of \$29,000,000, for the payment of which the revenues are pledged. If it takes eleven years, out of the revenues of this State, to pay \$18,000,000 of actual outlay, how long, I pray you, after that would it take the State to pay the \$29,000,000, before a cent is to be expended upon the improvement of our canals? I say it would be a reproach to the people of the State of New York to ask them to indorse any such policy. It will be an insane attempt to ingraft in the organic law of this State our speculations merely as to the prospective progress and development of this great country. It would be a policy of paralysis, and not a policy of growth. It would be repression and not improvement. The gentleman from Ontario [Mr. Lapham] very forcibly, in the very able speech he made upon this subject the other day, referred to the time when, with such restrictions, the people were compelled to lift them from the Legislature and allow the necessary work to be done. The chairman of the Committee on Finance, in his report, has called our attention to the fact that we cannot foresee what shall come. "Seven years ago," said he, "we little supposed that circumstances would occur which have since made this an era in our history." I ask him whether upon the same principle, he

shall not decline to petrify in the Constitution of this State his own speculations as to the limit of our material progress. We may enact compromises and we may enact peace; but all such limitations will be swept away in the presence of a public opinion and of a public necessity which demands it. I will not, therefore, support any scheme which is to fetter and limit our progress. But I think there is a middle way upon this subject. I think there is a way to determine this question by this Convention, which, while it shall preserve the public faith, will, at the same time, allow of flexibility in respect to the improvement of these canals when experience shall demonstrate that an enlargement of the water-ways of this State is required by the necessities of commerce. I feel strongly, I must say, the force of the suggestion upon the other side, that it is a breach of the public faith to disturb the funds which have been devoted by the State under the Constitution to the payment of the actual outstanding debts of the State. There is no sense, in my judgment—but I will not use so strong a term—it is not a very reasonable statement which is made by the majority of the Committee on Finance, that it would be a breach of the public faith to postpone the payment into the treasury of the money raised by taxation for the benefit of the canals until after any enlargement of the canals, which may be necessary, may be made. Was it a breach of the public faith in 1854, when we gave priority to the payment of \$10,000,000 or more, loaned for the enlargement, over the payment of the money raised from the people by taxation?

Mr. CHURCH—If the gentleman will allow me, I will state that there have been no advances except an insignificant sum of less than \$200,000.

Mr. ANDREWS—It is no less a breach of public faith because the amount may be small as to a matter upon which the public faith is pledged. It seems to me too clear for argument that the people have a right, without any breach of public faith, to make this change; that the same people who said the tax should be levied may say that this payment shall be postponed. I can see no force, no propriety in the suggestion upon that subject made in the report of the Committee on Finance. I do not oppose this enlargement either upon the suggestions made in the report of the majority of the Committee on Finance in respect to the taxation to which this country is subjected. I think it is an exaggerated statement in respect to that subject, and calculated to alarm and frighten the community, resting upon no solid or substantial basis. We are told that this State owes a *permanent debt*—this is the language—of \$633,000,000, in which sum is included the estimated liability of this State for \$500,000,000 of the national debt. The report states that we are *permanently indebted* for this amount, forgetting the fact that in the year 1900, with the same relative increase of the population of the country which has taken place in every decade since the Constitution was formed, we shall number ninety millions of souls, and forgetting the fact that in the decade ending in 1860 the aggregate increase of the national wealth was 126 per cent; and that if in future decades

that increase shall be 100 per cent, the national wealth in the year 1900 will exceed two hundred billions of dollars. Yet the national debt is fastened, as that report says, upon the people of this State as a permanent indebtedness to the amount of \$500,000,000. I can only account for the statement in the report upon the supposition that there is an over-sensitiveness upon the part of the gentlemen of the committee which leads them to oppose any debt or expenditure which may by possibility hazard the payment to the utmost farthing of this most sacred debt in our history. I cannot believe that it was intended to lead to or to suggest to the people of this State that most hateful word in the vocabulary of States—*repudiation*. I am willing, for one, while I have no policy in my mind which will not yield to other suggestions, I am willing to allow the revenue to remain pledged for the payment of \$21,000,000, subject to the ordinary repairs of the canal until that debt shall be paid, and then to leave to the Legislature the right to provide for the creation of a debt for the enlargement of the Erie and the Oswego canals if, after the experience of ten years, such an enlargement shall be deemed necessary. I would not object to a provision submitting the matter to the vote of the people, to be taken in the year 1872, when the old canal debt and the general fund debt will have been paid. Let them determine, at the expiration of that period, after five years, whether they will then proceed to the enlargement of the canals. These suggestions, and other kindred ones bearing upon this subject, would receive my assent. I ask pardon, Mr. Chairman, of the committee for having so long detained it, but I have stated, I think fairly and I know honestly, the views I entertain upon this most important subject.

Mr. CONGER—Mr. Chairman, in rising to address you at this time I feel as if I were departing from the rule which has been adopted, though without any formal vote, and which has thus far been followed almost spontaneously in this committee. We have not only been governed in this debate by the old adage, *audi alteram partem*, but we have heretofore heard each side in regular and alternate succession. Yet I am free to say that I follow the honorable gentleman from Onondaga [Mr Andrews] who has just taken his seat, with great satisfaction; because, although he may seem to have broken the rule of speaking only on one side, and has adopted the views of the Finance Committee on the so-called improvement of the canals, and those of the Canal Committee on matters of finance, yet I shall, with reference to some of the mechanical and hydraulic problems which concern enlargement, follow him gladly, because he has opened up a mode of demonstration which will make my work easier—my dull argument more quick of comprehension. He has, in a most forcible and familiar manner, brought out the great practical stupidity of this measure. He has shown that it is neither demanded by the necessities of our inland navigation, nor can it be sustained by the intelligence of a business community. If, after I get through the remarks which I shall address to the committee, on the

new enlargement as a practicable measure, I may seem to differ with him somewhat upon the financial question, it shall be mostly by attempting to explain how it is that he has mistaken the scheme of the Finance Committee. With regard, then, to the easy and unembarrassed navigation of the canals, as now finished in accordance with the plan originally proposed in 1835, the plan of enlargement which was so ardently coveted and so strongly demanded by the men of that period, and declared by the amendment of the present Constitution to be a finality; I say, on this subject of free trade and intercourse on the canals of this State, uninterrupted by visionary schemes, and untaxed by enormous expenditures, but, for some years to come to be operated in harmony with rules of economy and just laws of trade, Rockland shakes hands with Onondaga. I am not restrained, as the honorable gentleman said he was, by the seeming bias of sections, in expressing my views freely upon this question; nor have I ever been so. My people are like their neighbors in the city of New York, the friends of free, enlarged and unrestricted commerce, not only with the nations of this world, but with the sister States of this country. I had no embarrassment, democrat as I was, in the Senate of 1852, after bringing in a report against the lettings under the nine million project of 1851, and showing, if not to the satisfaction of the Legislature of 1852, at least as it subsequently appeared, to that of 1853, and to the people of this State, that all the practices and schemes which were connected with the plan of 1851 were fraudulent and void; in subsequently submitting the first constitutional proposition since the year 1846 for the speedy completion of the canals. This was accepted by the democracy of the State who had theretofore pledged themselves in their primary councils to be in favor of an early and final enlargement; and in 1853, although a different plan was adopted, yet I have to say to you, sir, as a matter of history, that that democratic Legislature, with Mr. Loomis, of Herkimer, at the head of its joint committee, perfected an amendment for a constitutional enlargement which was ratified by the people, and under which our canals were prosecuted to completion. I hope that no gentleman will for a moment imagine that in stating so much as this, I am actuated by any feeling of egotism as to the part which I took in that great measure. But I wish to remind gentlemen that now, as then, there cannot be any reference whatever to the old political divisions of this State upon a measure which is demanded by public necessity, and which is approved by the common intelligence of our people. On the other hand, as has just been demonstrated to this Convention by my honorable friend from Onondaga, there can be no hesitation upon the part of those who have heretofore stood upon other questions politically opposed, as to a plan which does not meet the requirements of common sense, which has not been demanded by the practical men of the State, and which could only result in forcing us into an attitude of spendthrift advocacy which no man upon this floor has yet appeared to assume, or if he has, has not adequately avowed. I propose to examine, in the first place, this

plan for the enlargement of the locks as proposed by the Canal Committee precisely as if the canals of the State were the property of a private person or a private corporation; and as if that person or that corporation were endowed with all the intelligence, possessed of all the information, and gifted with all the power and ability necessary, first to understand, and next to carry out what is demanded by the exigencies of the time; and gifted, moreover, with all the prescience possible to mortal ken, to know what are to be the demands of trade in the future, and what increased patronage will be awarded to a large outlay and judicious management. In this investigation I may call upon you to give a patient hearing to some calculations and some statistics which I deem to be necessary to a due and intelligent appreciation of the subject. There are many gentlemen in this Convention to whom this matter of the canal enlargement is wholly novel, and who, I suppose, desire to meet the question with calm deliberation and to come to a clear conviction of their duty, and who may not be unwilling that I should detain them a very few moments with some preliminary statements in regard to the canals—the old and the new. I wish to say that while I shall present this question in outline, as a question of practical engineering, I will attempt it in such a way as not to oblige my audience first to master all the elements of such a question with the thoroughness of a professional study, but to furnish such facts as will enable them, as men of plain common sense, to view the subject in a common sense light and in no other. The old canal had a water level 40 feet wide on the surface, 28 feet on the bottom, and it was four feet deep. It had 83 locks, 90 feet by 15, and it bore upon its surface boats 78 feet long, 14½ feet wide, and permitted to draw 3½ feet of water. The burden which those boats carried was from 80 to 90 tons; and, according to the rule which has been given by the engineers, the proportion of the weight of the cargo to the whole weight of the boat when loaded, was as 1 to 1.43. The tonnage displacement of water by the smaller load was 114½ tons, and of the larger 128½ tons, making an average water displacement of 121½ tons. After the canal was put in operation, it was discovered that a great mistake had been made in its engineering. The common impression which is left upon the minds of those who seek the history of this work only from authorities which have favored enlargement, is that the old canal had not sufficient capacity for the tonnage that was required to be put upon it. Although that was so to some extent, that statement will not convey the whole truth. The fact was, and I desire to say it in such a way that I may not seem to affect any special intelligence upon this subject, or to pass any reflections upon the integrity of the immortal men who first projected and executed the work; still there remains the fact that the great difficulty with the old canal was that in point of engineering it was a failure. The men who started that work may not have anticipated that boats of the size which were subsequently brought upon it, and laden so heavily as to sink to within six inches of the bottom, would ever be

put upon it. Perhaps they were not wholly familiar with the laws governing such navigation, which subsequent investigation in this country confirmed, and to which I shall presently beg to allude. But you will please to bear in mind this simple fact that the boats were more than one foot wider than one-third of the width of the canal, and that in that respect they violated the first law of uniform easy traction in a navigable stream confined within narrow limits as a canal. In practice also they drew within six inches of the canal, violating the same law differently expressed. When we examine the plan of the enlargement of the canal, we find the modification which that plan has undergone. The bench-wall, so much complained of, was part of the original plan. It was designed for a canal seventy feet wide, but it was not contemplated at the outset that the bottom should be over forty-two feet wide; hence the origin of the bench-wall. They thought, with the experience they had, that, in order to make the canal strong enough to hold more than three times the quantity of water which the old canal held, it was necessary to make the sides firm and strong, and hence the slope of the original enlargement was as two to one, instead of being, as it is at present, as one and one-quarter to one. Again, it was decided to shorten the canal, change its route in part, and diminish the number of the locks. As the canal now stands you have fifty-seven double and fourteen single locks, one hundred and ten by eighteen feet, with boats ninety-seven feet long and seventeen and a half feet wide, and drawing five to six feet of water. Here I may say that in such a canal, in order to satisfy the rules which I shall presently develop, no boat should be permitted to draw when loaded over five and a half feet of water. The burden of these boats was from two hundred and ten to two hundred and forty tons; and the proportion of the cargo to the whole weight of the boat when loaded was less than in the former case, and was as 1 to 1.20. The tonnage displacement of the boat of two hundred and ten tons is two hundred and fifty-two tons, and of the boat of two hundred and forty tons, two hundred and eighty-eight tons, making an average of two hundred and seventy tons of water displacement. Asking your indulgence for the time taken by these preliminary statements, I am better prepared to answer and ask touching the plan which is now proposed by your Canal Committee. They propose to enlarge the locks, to make them two hundred and twenty feet long and twenty-five feet wide. I think that the honorable gentleman from Ulster [Mr. Schoonmaker] made a mistake this morning when he said that "it was the plan of the Canal Committee only to make these locks two hundred feet long. How is it possible that the lock should be but two hundred feet long when the boats about which we have heard so much, and which are to pass through these locks, are to be of that length. The honorable gentleman will find that it is impossible for a boat of the size proposed to enter into the locks unless made of the length which has been designated—two hundred and twenty feet.

Mr. SCHOONMAKER—The locks were to be of sufficient size to admit boats two hundred feet

long. They were to be two hundred feet long between the ends of the lock.

Mr. CONGER—Not so, sir; but if the boat is to be two hundred feet long, how is it possible to enter or advance the boat into the lock? Let me draw the attention of the committee and of the honorable gentleman to the fact that on the former canal, with locks ninety feet long, the boats were seventy-eight feet long, allowing twelve feet of space; with locks one hundred and ten feet long, the boats were ninety-seven feet long, allowing thirteen feet. Is it too much to allow twenty feet for a boat that is to be two hundred feet long, especially when we remember the testimony brought before the Canal Committee? Mr. Stuart, State Engineer and Surveyor in 1848 or 1849, and United States consulting engineer, appointed by the President to inquire into the construction of gunboat locks on our trunk canals, in 1863, after deprecating the economy sought to be practiced by your committee in using rough blocks instead of smooth facing in the contemplated locks, and stating that though ten per cent might be saved in cost, that the locks would be damaged very much more than that by the boats knocking against them, and that the stone must be very solid as well as smooth, or that boats carrying five or six hundred tons would soon knock the lock to pieces—Mr. Stuart, I say, testified that while boats of the present size, carrying two hundred tons, give a blow equal to ten tons either on the sides or the gates of the locks, that one of these large boats would strike the gates with forty tons of pressure, or four times as much. I think, therefore, that it is necessary to give these boats some room on entering the locks. But aside from these views, the honorable gentleman from the Canal Committee will find that the facts and figures correspond precisely with what I said, that by the report these locks are to be two hundred and twenty feet long. Now, what do they propose? To put on these boats a cargo of five hundred tons; others say of six hundred tons. If these boats can be built in such a way as to sustain this weight, without very much increasing the proportion of the weight of the cargo to the weight of the boat when loaded, we may take the statement of the engineer, that with a cargo of five hundred tons there will be a displacement of water of six hundred and eighty-four tons; and if you enlarge the tonnage to six hundred tons there will be a water displacement in the canal of eight hundred and forty tons. Besides this, those gentlemen who have caught the figures, and the ratios between the width of canal and boats which I have given, will not have failed to perceive that the Canal Committee of this Convention propose to go back and commit over again the blunder of the old Erie canal, only making the blunder worse. They propose now, upon a canal which is to be seventy feet wide upon the surface, to give you boats twenty-three feet wide. In other words, they propose that the width of the boat should be to the width of the canal as 1 to 3.04; while on the old canal the ratio was as 1 to 2.75, and at this time on the present enlarged canal, as 1 to 4 precisely. In addition to this they aim to triplicate the tonnage. I shall not undertake

to say exactly what would be the effect of the large excess of tonnage displacement, but the committee will remember that upon the old canal it was about one hundred and twenty tons, and on the present canal two hundred and seventy tons, while it is now sought to effect an average tonnage displacement of over seven hundred and fifty tons of water. I will not stop now to inquire what power it would be necessary to use, instead of that now used, which by practice has been discovered to be the most profitable ever employed in the State. I do not desire now to ascertain how much extra power will be required to move one of these boats through a canal of this width. We may arrive at an adequate solution of these questions in some other way. I think, Mr. Chairman, that it is deeply to be regretted that the Canal Committee should have reported with but feeble modifications the wild and visionary schemes of engineers employed in the still more wild and visionary scheme of putting gunboats upon the canal in order to maintain proper relations between this country and Great Britain. For my own part I never heard that question broached without wondering at the amazing arrogance or ignorance of the men who conceived it. Did they remember the terms of the treaty with Great Britain in regard to the placing of boats suitable to be used for war purposes upon the lakes, upon either side? It seems to me that they would have seen that a resolution on the part of this government during the rebellion to put gunboats upon the canals, or to commence work with that end in view, would have been accepted by Great Britain upon the spot as a *casus belli*; because a negotiation for a contract with a State or its citizens, to do a thing which would inevitably result in violating existing treaties, would have been just as much a cause of war as would have been the actual realization of this delusive conception, and the entering of the pet monitors of that day upon our frontier lakes. Now, your committee, in taking up these engineers and the plans which our national government declined, did not stop to inquire as to the feasibility of their project or its general adaptation to commercial purposes. Had they gone back, sir, to the good old times of 1835, had they been willing to avail themselves of the wisdom which was presented to the Legislature that year in the reports made by the canal commissioners, when such men as Bouck and Van Rensselaer had oversight and such men as Jervis were the experts employed in the service of the State, they would have received some enlightenment on the merits of the enlargement they have espoused. They would have seen in the reports which I hold in my hand reference to certain experiments made nearly one-half of a century before that time, and discovered that having been originally started under the patronage of the French government, they were approved by the government of this State, and that the rule was laid down, based on ingenious researches made by the Chevalier De Buat, and first published in this country in the American edition of the *Edinburgh Encyclopedia*, that the ratio of the width of the boat and the width of a canal should never be more than one to four and forty-six hundredths

of a decimal. In other words, in order to navigate a stream like a canal, whose waters are shut in and pent up within narrow and sloping sides, with the same easy traction that you would attain in navigating a river without a current, or in navigating an indefinite expanse of water, as the phrase goes, you must have your boat no wider, with reference to the width of your canal, than one-fourth, the exact ratio being one to four and forty-six hundredths. They would also have discovered that the section of the boat should bear to the section of the canal the proportion of one to six and forty-six hundredths, and they would have seen that in order to secure a navigation of a canal with ease and consequent profit to those who navigate it, they should not attempt to build or use a boat wider than one-fourth of the canal, or, if they decreed that the boats should be 23 feet wide, then, following the true ratio, they should have announced to the Convention and proclaimed to the people of this State that, in obedience to those laws, it was necessary to make a canal $103\frac{1}{4}$ feet wide. Moreover, sir, they would not have spoken to you in such strong and bold anticipation of the future as to the possibility of navigating these boats with such heavy loads upon them, sinking them to within six inches or a foot of the bottom of the canal, for they would have discovered in applying this formula that no boat should sink lower when loaded than five and a half feet on a canal that was seventy feet wide and seven feet deep, and if either the proposed enlarged boat or any new boat were to conform to the rule, as long as the width of the canal was to remain as it is now, they should not have proposed any boat or locks wider than the present structures in use, the mathematical proportion for this canal requiring fifteen and seven-tenths feet width of boat. I will detain you just to add that in that report, formula and tables are given which state the exact relation of the width of a boat, to the width of canal, the depth of draught, the length of boat, the loss in rake of bow and stern, the burden exclusive of the boat, the tractile power required, the relative cost of navigating the boat, the transportation per ton, and the length of lock-chambers on a canal properly proportioned and navigated. All these things were carefully spread out before the Legislature of 1835, and the canal commissioners, headed by Governor Bouck, accepted the plan of enlargement. Moreover, our committee would have discovered that increasing a boat eighty-eight feet long and thirteen and a half wide, only one foot in width, allowing it to sink into the canal two feet deeper, in all five feet deep, adding to the length of it fifteen feet and to the loss in rake to bow or stern one foot, the burden, exclusive of the boat, would be as one hundred and thirty to sixty-two, or more than double; the tractile power would be forty-six per cent greater; the cost of navigating the boat would be nearly fifty per cent more, and the relative cost of transportation would only have been reduced twenty-one per cent, the additional length of the lock required being fifteen feet and the rates of the transverse area of boat and canal being increased from 1 4.84 to 1 7.06,

Now, sir, those were the proportions which science, guided and tested by experimental observation, established, and which should have controlled the judgment of our committee before they had undertaken to say to this Convention that they would recommend the passage of an article amending the Constitution securing the establishment of these enlarget locks and the navigation of the present canal by boats 23 feet wide. I say, sir, that if they had intelligently investigated this part of the subject, I have no doubt they would have come to the conclusion, that in order to get boats of that size, no matter what the cost would be for the enlargement of the locks, they would have had to announce to the people that the Erie canal must hereafter be enlarged throughout its entire length, to be at least 100 feet wide on its water surface. But we are told by the committee that by this plan of enlarging the boat, we are to obtain great advantage in increased speed, and great economy of time in navigating the canal, and of cost in transporting tonnage. I shall not delay you very long on this subject, although I may have to allude very briefly to some authorities which I think this Convention and the people of this State should be possessed of. Mr. Chairman, the chief experiments which I have been able to reach on this subject of increased velocity, were those made by James Walker, Esq., and published in the transactions of the Royal Society of London for the year 1828. Those who are curious to look will find it at page 15 of that volume. Now, sir, he admits that by the old theory, the resistance of the fluid *per se* increased in the duplicate ratio of the velocity; that is as the square of the velocity. But he insists that this is true only in the abstract, and that there are other elements of resistance caused by viscosity, by friction, by the accumulation of the water in front, and its depression toward the stern of the boat, in regard to which our ignorance of the laws which govern the internal motion of the fluid has prevented any correct theory from being suggested. He then adverts to the experiments made under the supervision of the French academicians as far back as 1776 to 1778 conducted by Bossut and others with D'Alembert at their head, where boxes six feet long and one foot wide were employed; and although I cannot assert with the positiveness of a thorough investigation, yet as near as I can ascertain, the rate of speed which was adopted as the standard velocity in those experiments, was only 1.85-100 of a mile. Our engineers in 1835 in ignorance of this rule supposed the French academicians had assumed the velocity of easy and ordinary navigation to be two and a half miles, but our experience shows that you could not navigate a boat on the *old canal* when its load was properly proportioned at a rate equal to two miles an hour without a severe drag upon the power employed; and the experience of those who navigate loaded boats now is that it is impossible with economy of power exerted by a good and sufficient team to attain more than a mile and a half. I should have added that the French academicians also employed models of ships of the same length of the boxes I have referred to nineteen inches wide, depth of

immersion varying from seven to sixteen inches. Now, sir, Walker made his experiments in the East India improvement dock, which was five hundred and sixty feet wide and twenty-four feet deep, so that there was no possible resistance to the boats that he employed, either from the sides or from the bottom of the dock. His first experiment was in a boat whose length on the surface of the water was eighteen feet and six inches; the breadth six feet, the depth of immersion two feet; the greatest immersed cross-section being nine feet. Remember that his boat was of a model altogether different from that of an ordinary canal-boat, and of course the resistance or the power required to draw it through the water was a great deal less than that necessary to draw a boat of the same cross-section, but of the shape of a modern canal-boat. His load was two tons and 200 pounds gross (4,880 pounds), besides the weight of three men who made the observation. Now, sir, at a speed of two and a half miles per hour he found the actual resistance to be eleven pounds. At a speed of four and twenty-three one-hundredths of a mile per hour, not quite double the speed, he found the resistance to be thirty-nine and one-half pounds, the resistance as calculated by ordinary formulæ being only thirty-two pounds. Taking the average of all his experiments before me, but which I have not time to recite, it is perfectly safe to affirm that increasing the velocity after you have once, with a boat of good model for ease of traction, reached two and one-half miles per hour, at a ratio less than two to one, you have an actual resistance quadrupled in value. These are his concluding observations, and I think they will commend themselves to gentlemen who can see what is to be the terrible cost of this most fatuitous project of trying to navigate these canals economically with steam so as to gain three or more miles speed per hour. Mr. Walker says:

"If with a speed of two and one-half miles an hour thirty tons on a canal be equal to seven and one-half tons on a level railroad, a speed of five miles per hour would, on the principle of the square, bring the railroad and the canal to an equality; while the result of the experiments makes the two modes of conveyance equal, considerably under four miles an hour, and gives the railroad the decided preference at all higher velocities."

But I can elucidate this subject, perhaps, Mr. Chairman, very satisfactorily to those who are present and have had some familiarity with the old navigation of the canal. A canal packet after the year 1836 was built eleven feet wide, drawing, when light, eighteen inches, and when loaded, two and one-half feet. Its speed never overran five miles an hour, and this was all that could be attained by three horses, driven to their utmost power of endurance. Now, sir, it required fifteen extra horses, as I am credibly informed, to get an extra speed of one mile an hour. But, sir, the gentlemen of the committee of the last Legislature who prepared a report on that subject, which was put on our tables when we were first convened here, have alluded to the Delaware and Raritan canal, and they tell you, on page sixteen of that report, that "steamers from one hundred

and fifty to two hundred feet long, and, say, twenty-three feet wide, have been in successful operation on that canal for the last twelve or fifteen years, their average speed, including lockages, being three miles per hour, at which they are limited by the regulations upon the canal." But they fail to tell the Legislature and to inform this Convention that the same boats in an open river, with the same or nearly the same amount of steam, attain a speed of from twelve to fifteen miles an hour. Now, to one who looks at this as a problem in dynamics, the question occurs, do not those boats lose from three-fourths to four-fifths of their power in navigating the narrow canal, and would not that be the invariable rule of loss for all persons engaged in—

Mr. HARDENBURGH—You have been somewhat misled, I think, in the practical operation of that canal. No boats run there now that carry tonnage larger than one hundred and fifty tons. They can run boats of five hundred and six hundred tons burden, but they do not in the practical operation of the canal transport goods in boats of larger capacity, with the exception of eight or nine boats, of tonnage higher than one hundred and fifty tons.

Mr. CONGER—I have no doubt the statement of the case made by the honorable gentleman, who has, I believe, investigated this subject, is perfectly correct, but, in giving the statement as made, it was simply my desire to draw the attention of this committee to the attempt made at this time to inveigle us into the belief that with steam you could force a wide boat through a narrow canal at a rate of speed equal to three miles an hour, and further, to show that such a project, if realized, involved a loss in power of at least four-fifths to three-fourths of the whole power employed. But with regard to the facts and points just suggested, I believe that my honorable friend from Ulster will be able to give this committee all the particulars of the navigation of that canal, and will confirm practically the position which I seek now for the present to advocate in regard to the gross waste of power that is to be employed in such a futile, absurd and frantic attempt to force a wide and heavy boat through a narrow and crimped channel at a speed of three miles an hour. If it be necessary to supplement these views as to the excessive waste of power resulting from this forlorn hope of getting up speed beyond a certain limit, I beg to call your attention to one fact which I desire to make historical, and to which I now very briefly refer. There is in existence at this time. Mr. Chairman, a steam packet on the Erie and Oswego canals about thirteen feet wide and forty-five feet long, and sharp built. In the canal the utmost that boat can effect in the way of speed is five miles an hour; on the Oswego river, with the same steam, it can run ten miles an hour with ease. That is evidence that in the canal, in a navigable medium which is restricted by sides so closely put together, there is a loss under the most favorable circumstances of build and lightness of boat, of half the power in undertaking the same rate of speed as might be gained in an indefinite expanse of water free from currents, and the experiment has been pushed as far as this: where steam has been in-

creased from sixty to one hundred pounds it has been found that this boat could not be driven any faster. This is owing, Mr. Chairman, to the theory of the wave, which is more definite and more marked when a high rate of speed is sought in a navigable medium, like the canal, than it is upon the rivers. And I will dwell on this thought now for the purpose of suggesting to the committee how it was that I, so ignorant practically of canal navigation, found myself impelled to the investigation of this branch of the subject from facts that had come within my own observation. There is not a person who navigates the North river, or who wends his way from the city of New York through the bays of the lower Hudson, who does not notice that as the boat comes in at different stopping places or goes over what is called the flats, if the tide is low the engineer has to cut off nearly all his steam; and even then, when the speed is reduced more than one-third, the action of the waves is so great that it seems to a novice to be dangerous, and would in fact be, if the boat were propelled at ordinary speed. In the agitation of the water the difference between the wave that is in front and the wave that is behind would almost make the boat touch the bottom. And having noticed this I felt that it was perfectly impossible to carry out this theory of getting a high rate of speed on the Erie canal with a boat laboring so heavily that it comes within a foot or a half of a foot of the bottom. Hence it was that a few days ago I set out to make these investigations and found some few authorities in the State library; and the documents on file in your library, to which I have already referred. Those who are curious to continue this investigation may find the whole theory of the wave on navigable rivers and a canal of restricted dimensions, illustrated in an investigation made by Scott Russell, Esq. and published in the *Edinburgh Philosophical Journal*, vol. xiv.

Mr. TILDEN—Made when?

Mr. CONGER—Made in 1834 and 1835. Moreover, it should not pass unnoticed, that your ordinary boatmen have compassed this subject practically and to this extent, at least, that they understand that in attempting a much higher rate of speed than ordinarily attained, the power of the wave which is raised at the prow, is felt principally at the stern, and the boat, instead of riding on the wave, is to be propelled against the power of the wave it has created and is said to ride against this stern wave. Now, Mr. Chairman, it does seem almost superfluous to bring up and seek to solve such questions as these in this committee. I would not wonder should I be thought to be like one that dreams or raves in supposing that gentlemen would give me a careful and continuous attention in going over such details. The natural impression would be that we ought to get the requisite testimony from practical men. But gentlemen will please to remember that this committee had a special convocation of those whom they call canal experts. They brought up here six civil engineers, all of whom but one had been in the employ of the State. They brought a canal commissioner and a superintendent and two forwarders in order to prove that this canal could be just as easily nav-

igated with boats twenty-three feet wide as it can now with boats seventeen and a half feet wide. I then, in order to show you that in the first instance this testimony is not to be relied upon, if it is there, advance the conclusions of the men who preceded these men of the present age in this business of advising the State on the great questions of practical engineering for an enlarged canal, I bring forward the conclusions and proofs of science to show how utterly fallacious the proposition is. But I am not content to rest the case there. Go down with me, sir, to-day in imagination to the boatmen that navigate your canal, and ask them what the difficulty is, and what the remedy is. Why, sir, those men, as I am well advised, will wax warm and grow eloquent in the commendations they give in favor of the canals. They have got a true, honest and natural canal spirit as against the competitive power of the railroads. They will tell you to a man that if you give them a canal that is thoroughly in repair, where they are not vexed by delays (and I may allude hereafter to the kind of delays I mean), that they can double the tonnage power of the canal in one year, if the freights offer to do it. They will tell you that the Erie canal has no chance now as against a railroad, merely because it is kept in such horrible condition. You ask your present State Engineer, and what does he tell you. [See Document No. 90, p. 44.] That there are not seven feet deep of water in the Erie canal east of the Montezuma level. It is filled up. The boatmen know this. They know how it interferes with the propulsion of their loaded boats. They know how much more power it requires to drag large boats over the surface of the mud that lies in the bottom of the canal; how much more power of horse-flesh; how much more time it consumes, and how much more money they are out of pocket. They will tell you as practical men to give them the canal in repair and they will run the risk, if freight offers, of doubling the tonnage of your canal. They will run the risk of all these trials about lockages, except, perhaps, should the freight of the Oswego and the Erie canal be duplicated, they might tell my honorable friend from Onondaga [Mr. Andrews] that another pair of double locks at Syracuse would remedy the difficulty and make the whole canal as navigable from one end to the other as if there was no interference whatever from the trade of the Oswego. Now, Mr. Chairman, we have some other evidence on this subject which is worth considering. The auditor tells you how many boats are on the canal or have been built. There were 3,727 boats built since 1860, and only a fraction over one-quarter of these boats was built of 200 tons burden. In 1866 211 boats were built from 200 up to 240 tons, only 68 being of 200 tons and 8 only of 240. Now, all the boats that were built last year were 485 in number and of 154 tons of average capacity for cargo. You will also find that the largest amount of tonnage delivered at tide-water and coming from Buffalo for the whole period from the year 1844 down to the year 1866, inclusive, was in 1862, and that the average cargoes of those boats in that year was 167 tons. So much, sir, has been said about lockages and the

difficulties connected therewith, that without going over what has been said, I will draw the attention of the committee simply to the tabulations which they will find in the report of the auditor, on page 50. The average days' time between Buffalo and Albany from 1854 down to 1862 inclusive, was eight and a half days, while many gentlemen on this floor endeavor to impress you with the belief that it requires almost double that time to come from Buffalo to Albany now. And you will discover, sir, that the average cargo of the boat that made that short time in those years did not exceed one hundred and twenty-five tons. In 1863, at an expense of half a day longer in getting from Buffalo to Albany, the tonnage of the boat exceeded that of 1862 by ten tons. Since that time, sir, the average tonnage has decreased. Now, I take this to be *prima facie* evidence that in the practical judgment of the boatmen who navigate this canal a boat of moderate tonnage is a great deal more economically managed on the present canal than any other. We understand, sir, that even in regard to vessels navigating the ocean there is a limit to their size. The Great Eastern is condemned as a failure, and the question comes to you as one for your practical sagacity, is there not a limit to the size of a boat for the tonnage that is to be put upon it in navigating your canals, economy being taken into consideration? You remember that your canal-boats have to stop and start frequently. They have got to be handled in locks and in crowds of other boats. With so many delays, could not six hundred tons be transported as cheaply on three boats as well as on one? That is the question which I think the forwarders and the boatmen would answer without any sort of equivocation. I shall not allude, except to notice what was most eloquently adverted to by the gentleman who preceded me, that the plan of this committee involves the absurd conception of taking out of the Erie canal double locks and putting in their place single locks made longer. All I wish to say on that subject (for I have no doubt that it will be thoroughly canvassed before we get through by gentlemen better able to discuss it than I am), is that it astonishes me that the same witness, the same authority that is responsible for the report made to the Committee on Canals (and I allude to no less erudite a gentleman than Mr. Littlejohn), should have, while advocating those enlarged locks (I will not say single tier, for I do not think that ever came within his conception, either as a thing of present practicability or ultimate relief), told you that after the present enlargement was started and they got the enlarged double locks east of the Seneca river, the same sized boats that had traversed the canal before in 1845 and delivered less than a million tons, brought down in the year 1855 nearly double that quantity. (See report to Legislature of 1867, page 4.) I may further allude to a question that arises, as to the manner and the time when this work is to be proceeded with. All the engineers tell you that this work, in order that navigation may not be interfered with or suspended, must be done in the winter season, that it has to be hurried within a short space of time at greater expense of labor, at

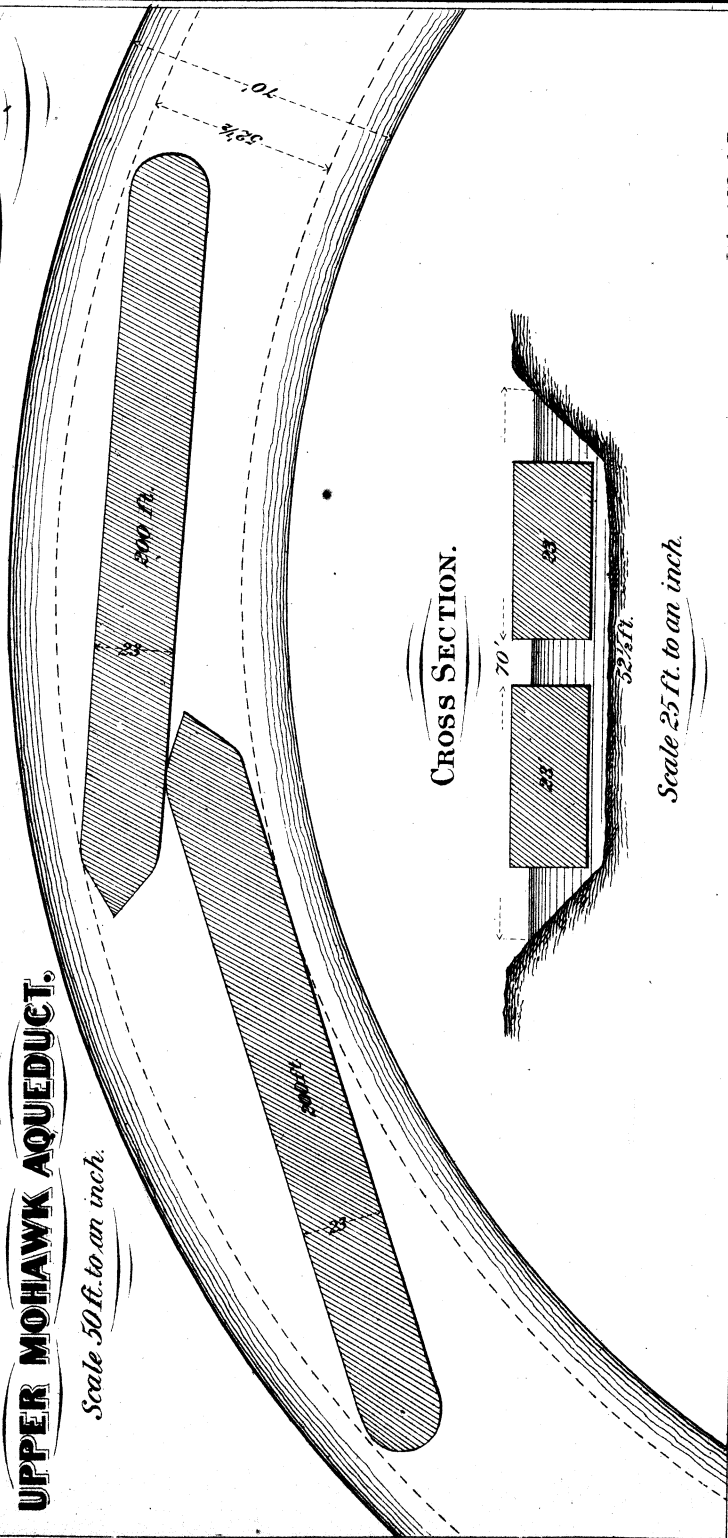
MAP of ERIE CANAL

at West End of

UPPER MOHAWK AQUEDUCT.

Scale 50 ft. to an inch.

Approximate Radius 270 ft.



greater risk of getting the large stones out of the present locks unbroken, at much greater danger of damage to the security of the work and its finish by reason of using water-lime in the winter season, and if you take the sum of the whole testimony on this subject you may state in plain English that if you could build these locks outside of the present canal in the summer, you could build them more cheaply, and connect them afterward with the canal at less expense than you could take up the present locks and substitute larger ones. And further, inasmuch as the cost of tearing the present locks apart, and the damage done to their materials fully equal the cost of new, stone, you could build locks of entirely new masonry, as cheaply as you could amend the present ones; a conclusion worthy of note, and to be connected with another more important one presently to be ascertained. But, Mr. Chairman, I must take up another topic. The old proverb is, that "seeing is believing." I was not wholly content to trust myself with a mere detailed statement of other mechanical difficulties that embarrassed this work, I thought it would be better to delineate before the committee the exact position of two of these boats in the canal. To this end I have procured a map to be made, which gives you by protraction, on an exact scale, a portion of the canal at the west end of the upper Mohawk aqueduct, where the canal goes round a curve with an approximate radius of 270 feet. The canal in the outer lines of width is put down at seventy feet, its upper water level. The inner lines indicate the bottom, fifty-two feet wide. Then I have two boats of the modern plan, two hundred feet long and twenty-three feet wide, and approaching each other to pass to this curve. Now, sir, in looking at these delineations would you imagine that these were conceptions naturally developed in a time of peace, or would you conclude that those who vaunted such a practical hoax had borrowed in fancy from the pictures of the olden times when men made war with other weapons than cannon? I should hesitate to say that they did not look like two floating battering-rams, two aquatic catapults approaching each other in deadly encounter, the interesting query being whether they will destroy each other or destroy the sides of the canal. But gentleman say, "Oh, we propose to enlarge those curves." Will the gentlemen tell me how wide they have to make the canal at that curve in order that those two boats will easily pass? Is there an engineer that has plotted it out for them or that is willing to do this and other like work within estimates? Will one hundred feet width of canal effect it? No, sir; I doubt if they had protracted the altered channel whether you could make the channel at that curve less than one hundred and fifty feet wide to get those two boats past each other without either interfering with the sides of the canal or clashing with each other. But I wish the committee to look lower down on the map at the cross section. That represents two boats passing each other in the canal in a straight line.

Mr. CHESEBRO—I would like to inquire by whom that map was made?

Mr. CONGER—This map was made in the State Engineer's office at my special request. The State Engineer is not responsible for it. I sought it, and got it as a matter of personal convenience to myself.

Mr. CHESEBRO—I understand it was made from his directions.

Mr. CONGER—It was made from a map in possession of the department. It is an exact copy of the map which gives you that curve at that part of the canal, and if any gentleman doubts the accuracy of the protraction of the boats as placed therein, he can for himself take seventy feet of space, the width of the canal as laid down, then three times that, and see how much this measure goes beyond the length of those boats. Perhaps I had better say just here that I sought to know of the State Engineer how many of those curves there were. He could not give me all the information I wanted, for he had only the books of the eastern division. But how many curves of similar kind do you think there are, Mr. Chairman? Say, for the first hundred miles, how many do you think there are which would have to be modified, more or less, to let these two modern battering rams pass each other without dashing the canal or their own sides to pieces? I ask the gentlemen of the committee, have they any conception how many of those curves need to be altered? Has any inquiry been made? Sir, I have the information that, from a careful examination of the maps, there are within the space between Albany and Frankfort, a distance of one hundred miles, two hundred and twenty-three curves. That is to say, for every mile there are two curves and a quarter, and these gentlemen propose not to remodel the whole canal, not frankly to tell the people what those experiments of large boats mean, but they tell you that they will alter the curves, and widen at the curves. Here, say they widen at one hundred and fifty feet, and in another place at one hundred and twenty feet, and at another place at one hundred feet. It would be wise in advance to know how much more it would cost to do that work and to do it in the winter season, than it would do to start fair and square on a bran new canal in the summer season, and build a new canal all the way from Albany to Frankfort lock, one hundred miles. Now, sir, that is a cross section. Suppose your canal had fifty miles of straight level without a curve, could you navigate a canal with two such boats as that? I made, this morning, a computation to see what it all means. Now, a cross section of your canal, seventy feet wide, fifty-two feet at the bottom and seven feet deep; has two hundred and twenty-seven square feet. Here, between the boats, you have a space that is seven feet wide, and these boats are supposed to sink, you perceive, about six feet in the canal. The whole displacement of the whole vertical section of the canal in water, four hundred and twenty-seven feet, has to go around the sides of these boats against the sides of the canal or through the middle. Now, sir, the capacity of this middle section for the water to get through is $7 \times 7 = 49$ superficial feet. On the other side of it you observe the ends of these boats are brought a little over the bottom line of

the canal, and as far apart as to give them a good berth and safe navigation, so that these triangular sections of water are about eight and a half feet wide at the top and six feet deep, and the capacity of both is fifty-one feet. In other words they have exactly one hundred superficial feet of water in your canal when these two boats are alongside in it, and all else you have left for the displacement of water that is to be affected by these boats passing or crowding each other is what is in the foot or six inches that is on the bottom of the canal fifty-two feet wide. Now, sir, I do not want an engineer to come here and be sworn to tell me that this is good navigation; I would not insult the judgment of any gentleman present by asking him if he thought it was. All that is necessary is to show that map and that is the end.

The hour of two o'clock having arrived, the PRESIDENT resumed the chair, under the standing order, and the Convention took a recess until seven o'clock, p. m.

EVENING SESSION.

The Convention re-assembled at seven o'clock, when the proceedings were resumed.

Mr. BELL—I ask unanimous consent to offer a resolution at this time.

Mr. CHURCH—I object.

The Convention again resolved itself into Committee of the Whole on the reports of the Committees on the Finances of the State and the Canals, Mr. SMITH, of Fulton, in the chair.

The CHAIRMAN announced the pending question to be on the amendment offered by Mr. Verplanck.

Mr. CONGER—When we took our recess I had advanced so far in the investigation of the problem appertaining to the navigation of the present Erie and Oswego canals by enlarged boats as to demonstrate the difficulty and impracticability of bringing two such boats of the proposed length around any of the ordinary curves in the canal. I stated that they were two hundred and twenty-three in number in the first one hundred miles in length of the canals, or about nine curves to every four miles.

Mr. SCHOONMAKER—In mentioning the number of curves that were on the canal, you have stated that there were some two hundred and twenty-three curves to be an impediment. I desire to call your attention to the testimony of James P. Goodsell, the State Engineer, to be found on page 50:

"Q. My question is general; if the locks on the canal were made of this enlarged size, so as to admit such boats as we named, and the wall-benches were removed, would there be any obstruction to navigation except the one you have mentioned of the short levels? A. Well, there are probably one or two points on the canal that would need relief; the shortest curve on the canal that I know of is getting into the lower Mohawk aqueduct; probably there are one or two points that would need to be improved."

He makes it one or two instead of a hundred.

Mr. CONGER—I will respond to the gentleman's suggestion by telling him, in the first place, that the map which is now on the wall exhibits

an exact configuration of the very curve to which Mr. Goodsell alluded in his testimony on page 50; and I have but little doubt that it is one of the worst curves to be found in the 100 miles spoken of. It was not selected from the mass of curves found on the maps in the Engineer's office merely to show the worst case that might be presented, but simply because this was the very curve to which his attention had been directed. I do not know the accuracy with which all this evidence has been taken. I do not wish to speak disrespectfully of the gentlemen that sat on the committee hearing and taking this testimony, but I beg to say—

Mr. SCHOONMAKER—It was taken in shorthand by a stenographer.

Mr. CONGER—I understand it was so taken; but I beg leave to say of it that if there ever was any testimony which showed the precise intention of the interrogatories by the extreme dexterity manifested in avoiding the possibility of untoward answers, this is a most excellent specimen. And this may account for the report of Mr. Goodsell's testimony, that there might be "one or two points on the canal that would need relief." No further question was put. So it is to be presumed that he meant one or two as bad as the one he had particularly noticed in his testimony and pictured on that map. I did not go to the State Engineer's office for the purpose of placing Mr. Goodsell on his oath; I did not go to interrogate him or to pervert or prevent his testimony in any form or shape; but I went there as a member of this Convention, desiring permission to look over the maps and to know what was the exact state of the case. As I could not pursue the inquiry, I left it to be prosecuted in that office, and I hold in my hand a letter received from the State Engineer this morning, and dated this 5th day of September:

"Sir: The whole number of curves on the Erie canal between Albany and the Frankfort lock (distance 100 miles) is 223.

"Very truly yours,

"JAMES P. GOODSSELL,

"State Engineer and Surveyor."

Mr. SCHOONMAKER—I do not care about that. There may be short curves or long curves; I do not care about the size.

Mr. CONGER—I think I was very frank in stating that it must not be understood that all these curves were of this radius, for it is figured on the map that the approximate radius of curvature is two hundred and seventy feet. But the greatest of the dangers to be met with in this sort of navigation, supposing the curves are all flattened, are yet to be pointed out. Suppose you have an injury to a boat in the position indicated in one of these curves, what will be the danger as a consequence to the navigation by way of delay? Now, sir, as the honorable gentleman from Ulster [Mr. Schoonmaker] has brought me a little out of the course of suggestions I proposed to make in these early hours of the evening to look at the testimony that has been presented. I beg to remind him and the committee of the remarks submitted by the gentleman from Onondaga [Mr. Alvord], who I regret not to see in his seat. Sir, you will remember the very mild reproof that

he addressed to the honorable gentleman from Orleans [Mr. Church], insinuating that that honorable gentleman had selected some parts of the testimony of Mr. Breed to match his special pleading. I was very much amused as the honorable gentleman from Onondaga [Mr. Alvord] undertook to supply the portions in that testimony which my honorable friend from Orleans [Mr. Church] had, as he said, omitted. I would have suggested the hiatus he himself left open at the time, but there seemed to be no immediate necessity for interrupting him. After following the points to which the attention of the committee was first directed by the honorable gentleman from Orleans [Mr. Church], and giving two or three interrogatories with their answers, the honorable gentleman from Onondaga [Mr. Alvord] had the good fortune or the fair intention to omit the following question and answer, on page 29 of document No. 90:

"Q. How was it last fall? (This with reference to the previous questions that have been asked in regard to the delays in the navigation on the canal.) A. There was a crowd last fall, but that perhaps did not grow so much out of the incapacity of the canal as a sunken boat and the loss of a gate; I have not any doubt but what there would have been a surplus of boats, owing to the break west; there was a break west, and at the same time a large shipment from Oswego arriving at Syracuse; then the detention of the sinking of this boat and loss of the gate, which kept up a detention until these boats from Oswego had passed."

Now, it is a specimen of admirable dexterity in the honorable gentleman from Onondaga [Mr. Alvord], in passing by this very important answer of Mr. Breed, as to the cause of detention in the navigation of that year; but I wondered very much that after having reminded the honorable gentleman from Orleans [Mr. Church] that he had exercised peculiar professional skill in the selection of the answers which he had read, my honorable friend—who professed indeed to ignore his profession—should have shown himself so professionally ready and competent, at so short a notice, to revamp the old tricks of his trade. It is a matter which should not escape our attention, Mr. Chairman, that these sunken boats and these breaks in the canal are the principal causes of detention of this navigation; and if the detention, by reason of the sinking of an ordinary boat is so great, I desire to know what will be the detention when a boat two hundred and twenty feet long is sunken on the bottom of the canal—mayhap in such a curve as this. The time and the labor which is required to get rid of an ordinary sunken boat would be multiplied ten-fold in case of an accident to a boat of this description. My time forbids more than a passing allusion to the alterations that may be required on the thirty-two aqueducts on the Erie canal, having an aggregate length of about four and two-third miles, the longest near Schenectady, being 1,130 feet in length, and like its neighbor only forty feet wide. Neither can I more than glance at the Rochester aqueduct, whose parapet walls are ten feet thick at top on both sides, whose width is only forty-five feet, and the entrance to which, at one end,

is at a right angle, leaving a worse curve in such immense masonry to be altered than the one you have before you on the map. But it is time, Mr. Chairman, that I should pass to another branch of this subject. Supposing that the work is to be undertaken, the next question that presents itself is as to its cost. I propose to investigate very briefly this question of cost, which was so admirably opened by the honorable gentleman from Onondaga [Mr. Andrews] who preceded me, and who has saved me the trouble of going into many of the details which are presented by the various statements of engineers in the reports that have been laid before us. But I beg to call your attention to the fact that when the old canal was to have been built, its estimated cost was \$4,900,000; its actual cost was \$7,100,000; the proportion between the cost, as per estimate, and the actual cost of its completion being as seven to ten, minus a fraction.

When we come to the new canal, the estimate of its cost was about \$23,000,000; its actual cost exceeded \$39,000,000; and it was not finished at that, for the wall-benches of the eastern 75 miles were not taken out; or, if this work was not included in the estimates, it is demonstrable that the canal was hardly left with a full seven foot bottom all the way through; and moreover, there are thirteen locks yet to be enlarged, and some other matters, so that it has been estimated that there is over \$170,000 yet to be expended on the western division, according to the original plan of the enlargement. But take it at these figures—the estimate being \$23,000,000, and the cost \$39,000,000—the ratio is as seven to twelve. Now, on the supposition that by the force of the great ingenuity which this committee brings to bear upon this proposed work of tearing down and building up, they could possibly compass some saving in the labor, we will suppose that the ratio is as seven to eleven, which is the mean between the ratios on the old canal and the new, of the estimated and the actual cost. When then we come to these enlarged locks, as they were originally represented, at a cost of thirteen millions of dollars, after this ratio the cost would be over twenty millions of dollars. By the plan which proposes to dispense with the rubble masonries, and to avoid deepening or cleaning out the canals, the estimates are reduced to ten millions of dollars; then apply your ratio, and the actual cost would be sixteen millions of dollars nearly; on the other hand, if you accept the estimate of the committee, eight millions of dollars, the actual cost rises to twelve millions and five hundred thousand dollars. But you will remember, sir, that there is no adequate provision in this plan for the real cost of altering these curves all the way through the canal; and if the suggestion that I made in regard to the independent set of locks is worth pushing any further at this time, it is within probabilities to assert that the cost of enlarging the canal at these curves would be so great, for it must be remembered that the work would have to be done in the winter season—that a new canal one hundred feet wide could be built in the summer season at very little more cost than the work which is now proposed, and the work which must

necessarily follow within ten years. Therefore, it would be better for the people of the State, financially, to start somewhere along-side of the old canal, and first build a set of new locks, doing the work in the summer seasons, and then build an enlarged canal, also, doing the work in the summer season; and they would expend no more money in that way than they would under the plan which is now proposed, the accruing benefit of such a course being this: they would have two canals instead of one. The only impediments in the way of such amendment of your committee's plan that could be readily suggested would be the extra expenditures necessary for purchasing the land and the right of way, and procuring the water to fill a canal of that size. The last item might be omitted, inasmuch as gentlemen do not think there would be any difficulty in bringing in water enough for the enlarged canal such as they propose. But I consider it important not only to look to the actual cost of the work as first contemplated, and also to that which follows; but further, to the cost of transportation, because of the theory suggested that the enlarged canal would cheapen transportation and freight. The cost of transportation per ton per mile, inclusive of tolls, on the old canal, was one mill, as appears by the engineer's report in 1863. The cost of transportation on the new canal was four and a half mills. Now, this report, and the map which accompanies this statement, was made in the office of the State Engineer, and I find that the map was made by the deputy, who was examined before this committee. I allude to this, more particularly, because of the real or seeming conflict between his testimony before this committee and his official statement in the map prepared for the public. In his testimony before the committee he says the actual cost of movement of freight on the original Erie canal, with boats of eighty to ninety tons burden, was four and thirty-four hundredths mills per ton per mile. Then he goes on to say that the actual cost of movement on the present enlarged Erie canal, with boats of two hundred tons burden, exclusive of tolls, is two and ten-hundredths mills per ton per mile—a reduction of fifty and a half per cent. Now, we have this remarkable disparity. He tells the public, he tells the Legislature, what every body knows to be true, that the cost of transportation per ton, per mile, on the old canal, was one cent, when he tells this committee that the actual cost of movement was less than four and a half mills. He tells the Legislature, he tells the people, in the annual report, what every body knows, that the cost of transportation on the new canal was less than half a cent; but he tells this committee that the actual cost of movement was less than two and a half cents.

Mr. SCHOONMAKER—What is that report?

Mr. CONGER—The report of the testimony taken by the committee in Document No. 90.

Mr. SCHOONMAKER—But the other report that you referred to. I hold in my hand the report of Mr. Taylor, the State Engineer in 1864—

Mr. CONGER—I refer to the report of 1863.

Mr. SCHOONMAKER—I have the report of 1864, in which he gives the cost of transportation

by the old boats at four and fourteen-hundredths mills; and the cost by the present boats at two and sixteen-hundredths mills; in the proposed large boat, one and four-hundredths mills.

Mr. CONGER—Yes, sir; but I have alluded to the statement of cost as given on the map prefixed to the report of 1863 which is, I presume, to be found also attached to that of 1864. The testimony, as I understand it, is that in the original Erie canal, in boats of from eighty to ninety tons burden, it was four mills and some fractions per ton per mile. That is his testimony before your committee; but the statement as made on the map, and the fact confirmed by record, was, that it was a cent; and that the cost on the present canal is four and so many fractions of a mill per ton per mile.

Mr. SCHOONMAKER—Small boats.

Mr. CONGER—Hence follows the absurdity as well as the falsity of the conclusion that when you get this new canal, by taking fifty per cent from the falsely stated present cost of transportation, you will go down to the extraordinary minimum of freight per ton per mile, exclusive of tolls, to wit, one and four-tenths of a mill. I do not allude to this for the purpose of impeaching the testimony of this as a facile witness, but for a much higher end. I wonder that our Committee on Canals, sitting around that board, and knowing, or supposed to know, certain facts in regard to the cost of freight and transportation, should have allowed this statement to go unchallenged or unexplained. Perhaps it may turn out that there is a nice distinction taken between the cost of transportation, to use the precise language of the report and map of 1863, and the actual cost of movement, as it is phrased in the testimony. Perchance this discrimination is recognized by engineers as a class. But should it not be explained in some way to meet the plain common-sense use of terms ordinarily employed by business men? For aught you or I, Mr. Chairman, can tell, the latter phrase, "actual cost of movement," may be only what it costs the carrier, and not what is charged to the consumer, or it may be figured on the closest calculation of expense on the down trip averaged at ten days without any regard to the total cost of the round trip. I am free, for one, to confess that I would like, myself, to see the day when carriers would become so gracious as to bring the cost of transportation per ton per mile fifty per cent below proffered rates. I would like to see it; so would the whole city of New York and whole valley of the Hudson rejoice in any scheme which would promise this reduction of fifty per cent on the cost of carriers' charges from the present rates. But that is a subject to which I will advert more particularly hereafter. As I may not have any further occasion to refer to the testimony which was taken by this committee, allow me to make this final remark in regard to it. The testimony of every engineer who was examined, except Mr. Sweet, if it is carefully analyzed, will be found to be point blank against the practicability of this measure. There is not an engineer in this country who dare take this fancy of an enlarged lock and an enlarged boat with the present prism, and put his

sign manual to it and indorse it before the country. Why, sir, when they came to examine Mr. Littlejohn, who is, above all others, *facilis princeps* in the attempt to effect this cheap transportation through large boats, what did he say to that committee? After alluding to the necessity for the enlarged boats and for having enlarged locks, he says: "I do not wish to *stultify myself* by the supposition that it would not be necessary to enlarge the prism of the canal immediately." He seemed to think that this would follow as a matter of course; and in that respect Mr. Littlejohn was perfectly consistent. But I think our Committee on Canals, unfortunately for themselves and the State, failed to see the absolute necessity, when this plan was once started, of the consequences that would follow, and the expense, toil, trouble, hindrances and snares to the people of this State of a newly enlarged canal. But, Mr. Chairman, supposing that this plan should be abandoned, suppose some other plan could be suggested by which we could effect the transportation of the freight that offered, for the purpose of getting cheaper carriers' charges and a larger amount of the products of the great West and North carried to tide-water—supposing than an economical and practicable scheme could be presented, the next question that occurs to a thoughtful mind would be this: What is the work which is to be done? What is the work which is now done, and what is that which is to be done in the future? The statement of the auditor in regard to the tonnage, the value of the property and the tolls paid for transportation on all the canals of the State for the year 1866 may be summed up under this general classification—first, of the products of the forest; next, of vegetable food; and, next, of manufactures, merchandise and other articles. I only call attention to the prominent items. It is a remarkable fact that, in a tonnage which exceeded five and three-quarter millions, the products of the forest, vegetable food, and "other articles" not enumerated—as merchandise and manufactures—each exceeded thirty per cent, by a very small fraction, so that, for practical purposes, we may say that the tonnage of these three several classes of freight, on the canal was the same in amount. I will stop a moment to say, that under the designation of "other articles" are included anthracite and bituminous coal, of which there were 1,136,000 tons; stone, lime and gypsum 295,000 tons; copper and iron ore, 186,000 tons, as the leading items. Now, when you come to the tabulations of the values, you find that, although the products of the forest were a trifle over ten per cent, vegetable food was a fraction under thirty per cent, the merchandise was over thirty-six per cent and the other articles fell just a little below fourteen per cent. But, what is most instructive, and most material for us with reference to the questions that have been raised, is that, when you come to the tabulations of tolls, you find those paid on the products of the forest to be twenty-one per cent; those on vegetable food fifty-six per cent; those on merchandise, scant three per cent; on manufactures, less than three-and-a-half per cent; on all other articles, less than ten and a half per cent; so

that the vegetable food paid *over one-half* of all the tolls that were collected by the State, to wit, fifty-six and sixty-three hundredths per cent, or over two and a half millions of dollars. I propose, in further prosecution of this subject, to leave out of consideration statistics which are connected with the other classes of items just specified, and to confine your attention to those which give the tonnage of vegetable food. But I must prepare you for the statement that will follow, as to the future development of vegetable food; and ask you to look at the tables and estimates of the future products that are to come over our canals, especially from the Western States. The rate of increase over all the canals, from 1837 to 1866, being assumed at a fixed per centage, which as a test is chimerical, you are led to a *quasi* prophetic study of most fabulous tonnage of food to weigh down your boats and overtax your canals. Sir, I must call your attention to the false philosophy applied to statistical tables, which underlies all these calculations, made by the committees whose reports are before us. I have to show you how utterly delusive they are. I do not take the table which the auditor gives, so as to trouble you with the whole range, from 1837 to the present time, but I have selected the statements of important years, which I submit as the true basis for any theory of future expectancies.

YEAR.	Tons from Western States.	Tons from this State.	Total tons.
1837,	56,255	321,251	587,506
1845,	304,551	655,039	959,590
1846,	506,830	600,662	1,107,270
1852,	1,151,978	492,721	1,644,699
1857,	918,998	197,301	1,117,199
1860,	1,896,975	379,086	2,276,061
1861,	2,158,425	291,184	2,449,609
1862,	2,594,837	322,257	2,917,094
1863,	2,279,252	568,437	2,847,689
1864,	1,907,136	293,498	2,146,634
1865,	1,903,642	173,538	2,077,180
1866,	2,235,716	287,948	2,523,664

By this table it will be observed that up to the year 1852 the highest amount of tonnage, including that year, from the Western States, was 1,152,000 tons nearly. We go along then, sir, until we come to 1857, when that tonnage fell short of a million, by about 80,000 tons. Then, in 1860 we recuperated, until we reached 1,900,000 nearly. Again, in the first years of the war, 1862 and 1863, the tonnage rose in the former year to nearly 2,600,000, and in the latter fell to nearly 2,300,000. I do not design, sir, to establish a rate of increase during this whole series, but I beg to draw your attention to the calculation which I have made, that from 1852 to 1861, a period of ten years, the increased tonnage from the Western States was 99 per cent; and the total increase, including our own State, was only a fraction over 48 per cent. When you go from 1852 to 1866, a period of fifteen years, it is very remarkable that the percentage of increase varies from the percentage which I have just given you, so little, that I can only make it increase a half per cent over the ninety-nine per

cent; while the total increase on all the tonnage of the State for vegetable food was fifty-three per cent. I estimate that going from 1866 to 1884, a period of nineteen years, allowing the same average rate, jumping from term to term according to the ratios that I have just given, you will have one hundred and one per cent of increase only; and your tonnage of vegetable food, including that of your own State, will but a little exceed five millions of tons. This same method of calculation applied to all the tonnage on our canals, may realize Mr. Sweet's estimates of entire tonnage, inclusive of what is brought down to, as well as what is returned from tide-water.

Mr. SCHOONMAKER—Will the gentleman inform me where that calculation of Mr. Sweet is to be found?

Mr. CONGER—In his testimony before you, sir, on pages five and six. Mr. Chairman, I have in the next place to correct most egregious, say, rather, remarkable, statements which appear in all the reports on your table in regard to the capacity of the great West for the production of food. The author of the report to the Legislature to which I have before referred, drawing upon his noted enthusiasm, has left us to infer that the present capacity of the cultivated farms of the great West—the eight Western States to which allusion is especially made—was less than twenty per cent, not simply as to the state of cultivation now existing but with reference to the amount of land cultivated compared with all the arable lands of those States. I find in the report made by the commissioners of the canal fund to the Legislature, that not more than one-sixth of all this immense area has been brought under cultivation. This opens the question as to the area that now exists under cultivation and the area that is yet to be developed. Any one who will take the trouble to look at the census of 1860 will find how it is that these gentlemen have made such mistakes. They may have confounded the number of acres of these eight Western States with the number of acres throughout the whole United States, and they have taken the tenth or one-twentieth part of that. If I mistake not it has even been said that the one-twentieth part of the land of the Western States was yet undeveloped. By looking at the census you will find, sir, concerning all the farms of the United States, this general proposition, that the improved portion of land in farms was a little over one hundred and sixty-three millions of acres, and the unimproved portions of such farms was a little over two hundred and forty millions; in other words, as sixteen to twenty-four, or as two to three. That is to say, sir, taking all the farms in the United States, of land inclosed and cultivated, two parts are under cultivation and three parts are what are called "unimproved lands." When you come to these Western States, including Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin, you find that the sum total of the improved lands is very nearly fifty-two millions, and the sum total of the unimproved portions of the farms in those States is little over fifty-three and one-half millions—the ratio between the improved and the unimproved standing about fifty-two to fifty-

four, or nearly equal. Now, then, sir, as the census of 1860 does not repeat the statement of the census of 1850, I give you the sum total of all the acres, as returned by the latter census, pertinent to this issue. In the first place, the sum total of all the acres in the United States, somewhat exceeds one thousand five hundred and seventy millions of acres. When you separate the acres that are returned, of these eight States, and sum them all up, you find, sir, including waste lands, ponds, lakes, bogs, and every thing of that sort, a trifle over three hundred and eighteen millions of acres. The committee has stated that number approximately, with reference to the acres that may be separated, as of land capable at some future, indefinite day, of being put under cultivation, from the part of this extent of territory which lies under water; they have stated the area at two hundred and eighty-five millions; and yet they tell you that not one-sixth has yet been brought under cultivation. That calculation, evidently not accurate, was, moreover, not made by a man who knew anything about farming or the condition of farms, either in the State of New York or in the great West; for every one familiar with that subject knows that in this country we have not reached such a state of development of the cereal products, that all the farms in this country can be put altogether under the plow, each and every acre, with no land left as waste or pasture, or what is called "unimproved land." The farmers of the West raise cattle for the market, and cows for their dairy, and the production of butter; sheep, horses and mules also, and thus need a large portion of their farms, which is returned in the census as "unimproved" for pasturage. Let me say to you, sir, that wheat and corn would have to command, for a number of years, much higher prices in the market than they do even at this present time, before the farmers in the Western States can take all their unimproved land and put it under the plow, and give it the drainage and cultivation needed, before they would be willing to give up the raising and pasturing of domestic animals and restrict themselves in the enjoyment of the ordinary comforts of farm life, in order to put every acre which is within fence under the plow. Taking these figures as the committee have given them, suppose at some distant day these two hundred and eighty-five thousand acres to be occupied by farms, and to be distributed between improved and unimproved acres as all the farms in the country are, and on the same average, what then would be the result? Why, sir, you could not increase the amount under cultivation two per cent—if every acre was in a farm, and every farm received the attention which the farmers of the West are giving now to their lands, at best you could not increase the amount under the plow, and under farming care, more than two and a half per cent. Instead of the statement, then, that not one-sixth, or, as some one else gave it, not twenty per cent of these Western lands have been put under cultivation, you have to abridge that statement to this: that less than two and a half per cent of those lands has as yet been brought within the ordinary description of farming lands. But, please to bear in mind, Mr. Chairman, another thing: that a large por-

tion of this land stretches away beyond the line where it is possible to raise even corn. You can carry the line of wheat, up through Minnesota, to a very high point; but you cannot carry the line of corn planting as high in the States this side of Minnesota. So that when I say the proportion should be stated as one to two and a half, I ought, further, to modify that ratio by reason of the influences of climate—which I have not thought it desirable specially to elucidate—and thus we come to a final statement, that, let the West do their utmost, and let these Western States that are named be whelmed by the highest tide of population, and let every acre that is capable of being occupied and put under ordinary farming management within the next half-century, they cannot develop their production of wheat and corn beyond the present rate more than one hundred per cent. Moreover, sir, they will be obliged to improve their farming in some of those Western States, where the lands are being run out, to keep them up to their present capacity and maintain their products at the present rates. Now, sir, I know that to many persons who have received these stories, which have risen up like fables—like exhalations wild, covering the desert air—I am aware that I seem as one that chaffers without bound; but let us look a little further. I have been at pains, sir, to run over the census of 1860—to separate all those cereal productions of the United States, embracing wheat, Indian corn, rye, oats, barley, buckwheat, peas and beans, giving you the sum total of the productions of these in the whole of the United States and Territories, and then what is produced in the parts known as the Western States in the census, which adds two more States than those embraced in the report of your committee, to wit, Kentucky and Kansas, the Middle, Southern, Pacific, and New England States: and then I have given, also, the production of New York. The whole of the United States produced 173,000,000 bushels of wheat, being at the ratio of five and one-half bushels to each inhabitant; the Western States produced 102,250,000, or at the ratio of ten bushels to each inhabitant; the Middle States, 30,500,000, or three and two-thirds to each inhabitant; the Southern States, 31,500,000, nearly, or three and one-half to each inhabitant; the Pacific States, 7,660,000, or thirteen and eight-ninths to each inhabitant; the New England States produced a million and a trifle over, or about eleven and one-half quarts to each inhabitant. Now, you are met here in the first instance, with the astounding intelligence in regard to the production as reported by the census of 1860, that the highest on the list in the production of wheat to each inhabitant were the Pacific States, which raised nearly four bushels to each inhabitant more than was raised in the Western States. That is a very significant fact, sir, and I remember that in the early days of the session of this Convention, when the honorable gentleman from Rensselaer [Mr. M. I. Townsend] doubted what I had urged in regard to the debt of the country, as a reason why we should not precipitate ourselves, before careful inquiry, into a new enlargement, he suggested that, not only

in the city of New York, but in the county of Rockland, we needed the productions of the West. He asked what we would do if it were not for the productions of the West pouring its wheat and corn into our laps—what we would do for food for man and beast in the county of Rockland? Had the honorable gentleman waited for an answer I should have been obliged to tell him at that time that the last quantity of flour that had been purchased for the support of those under my care came from California via Liverpool, and if it had not been for that accession of store to the supply then in New York, common flour would have gone up in that city to twenty-five dollars per barrel. Therefore I think, from the present as well as the future indications, this question in regard to the supply of cereals, especially of wheat, is not entirely to be determined by the productions of the Western States, or the facilities for the transmission of the products of their farms to the city of New York. Hence the reason I seek to draw your attention to the productions of the Pacific States. There is also this further consideration, that the Western States, as a general rule, do not produce grain, either wheat or corn, equal in quality with that which is raised in the State of New York or in the Southern States or that which is raised in the Pacific States. Not to detain you with the ratio of production to each of the inhabitants of the several States, as given by the census, I will sum it all up by saying that out of twelve hundred and fifty-four millions of bushels of grain, of all the sorts I have enumerated, produced in the United States, the Western States including Kentucky and Kansas produced six hundred and seventy-four millions; the Middle States two hundred and eight millions; the Southern States three hundred and forty-eight millions; the New England States only twenty-five millions, while the State of New York produced seventy-nine millions. Now, this summary would be without the influence which it ought to have in a discussion like this, were it not coupled with the further statement which is given by the census return itself. After fabricating minutely the proportions which these States have produced of all these various grains in bushels to each inhabitant, the report says: "It will be seen that in proportion to the population, taking the States and Territories together, there has been but slight increase in our principal crops since 1850. Of all these grains (enumerating them) there were raised in 1850, thirty-eight and twenty-eight hundredths bushels to each inhabitant; in 1860," how many do you think, sir? What do the gentlemen who imagine so much of the future development of the produce of this country, what do they suppose in ten years, from 1850 to 1860, was the increase in the amount of grain produced to each inhabitant? Why, sir, it was only eighty-seven hundredths of a bushel to each individual. Further on "when it is remembered that our horses, cattle, sheep and swine have also increased, that these animals have to be fed, to a certain extent, on the products named, the total increase, less than one bushel to the inhabitant, is small indeed." You see that even if population does in-

crease, if farms are multiplied, if the work of cultivation goes on, unless we increase much more rapidly in 1870 from 1860 — much more rapidly than we did in 1860 from 1850 we will only be able to give a beggarly fractional part of a bushel to each inhabitant as the extra gain to our merchandise in farms, and in the cultivation of grain. Now, Mr. Chairman, although these gentlemen picture to you so much of the future capacity of those eight Western States, when the census tells you how very little increase was made in ten years in the production of all the States of the Union with reference to their inhabitants, when you consider that in addition to providing for a population of nearly thirty-one and one-half millions of people, you have to feed also over eighty-nine millions of domestic animals, it may be inferred that as the Western States increase in population and multiply their flocks and herds they will require a greater amount for home consumption, even if they do not develop a new line of policy and encourage manufactures at their principal centers. Where then is your immense trade of grain to come from—from what West—to fill your canal-boats enlarged to this new amplitude of navigation? Sir, I look upon the whole story as a delusion, a figment of the imagination. I should be very glad to believe that it was possible to predict from these census returns a much larger agricultural wealth for the whole people of this country. But I am compelled to give you the statistics just as they are. I call next upon the gentlemen who have inaugurated this attempt to revolutionize the system of transportation in this State to show where the grain which they expect to raise is to go. Are they going to send one hundred and fifty or two hundred extra millions of bushels to the city of New York to glut the market? Will they hurry their grain in huge bulk and so rapidly to that city, that it may be exported to foreign countries? The next question comes up: What foreign countries want it? We have been told so much of the necessities of Great Britain that I think it well to know whence Great Britain gets her supply of grain. Sir, the aggregate imports of wheat into Great Britain and Ireland from five of the leading grain exporting countries during the ten years ending with 1863, were: From the United States, nearly thirteen millions of quarters; from Prussia nearly eight and one-half millions; from Russia a trifle over seven millions; from Egypt a little over four and fifteen-hundredths; from Canada less than two and one-half millions of quarters, so that the annual importation from all these countries into Great Britain was a fraction over three and one-half millions of quarters, and from the United States less than thirteen hundred thousand quarters. We may be elated too much by the extraordinary amounts shipped to Great Britain and Ireland in the two years ending June 30, 1862 and 1863, in the former of over thirty-four, and in the latter of over forty-seven millions of bushels of grain, at an average annual value of over fifty-two millions of dollars. As intimately connected with these exports, and as best calculated to dissipate the incubus which imparts such dark despondency

to the dreams of those who fear that the commerce of the city of New York is to depart to other ports on our Atlantic coast, let me interpose that the export of flour and grain from the metropolis for six years prior to June 30, 1861, may be summed up from this census as valued at one hundred and forty-one and a half million of dollars, while for the same period the exports from Boston were about eight and a half millions of dollars in value, those from Philadelphia not quite seventeen millions, those from Baltimore a trifle over twenty-five and three-quarter millions, and those from Portland less than one and a half millions. If it is necessary to follow up these inquiries, any gentleman who wishes to take these figures can make a very fair approximate conclusion as to how much extra grain will be raised in the eight Western States during the next decade; how much of it will be consumed; how much of it will be exported; how much of it will go down the Mississippi; how much of it must be consumed in Canada; how much of it will come to Atlantic ports, and the lion's share that will be secured to the city of New York, according to the laws of trade. In regard to the future, as well as the present, I wish the way was easy. I wish there were no difficulties to be overcome. For one I will advocate as free a canal as we can get in the State of New York, as free a canal as the gentlemen who sit at the other end of this hall, taxing the grain of the West will permit us to have. Sir, we want food for man and beast in the Hudson valley at the cheapest possible rate. But we cannot get it. What are the reasons? There are two general causes why our wishes are not gratified. First, we are at the mercy of the men who sit at the western gates of commerce at Buffalo and Oswego, places where the people may be said to go to be taxed; who have what are called elevators, who put upon each bushel of grain that is taken from the lake boats for transportation to the city of New York and elsewhere along our canal lines the extreme price of two cents per bushel. I do not know how much would pay them a fair living profit, but I believe the old charge was about a cent per bushel. It will be remembered that the honorable gentleman from Onondaga [Mr. Alvord] insisted how easy one-quarter or one-eighth of a cent on a bushel would turn trade. I wish to know whether this extravagant and extreme tax for the transferring of grain at these western ports is not threatening the prosperity of the State of New York with disaster far more than the tolls that are imposed by the State. Let us look very briefly at what the auditor informs us in a table given on the thirty-second page of his report.

Mr. VERPLANCK—I would like to know if the gentleman is at all acquainted with the amount of capital invested in elevators, and the amount of benefit they do the grain by handling it and cooling it, and whether or not two cents is an improper charge, taking into consideration the capital invested, and the labor necessary to handle the grain?

Mr. CONGER—I do not know the particulars of all the questions which the gentleman has

asked. But I know this: that in the city of New York on the Atlantic docks they only charge one and one-quarter cents for the same service. If capital in Buffalo is worth more than capital in Brooklyn then perhaps the gentleman will force me to a further investigation of this question.

Mr. VERPLANCK—Does the gentleman know that grain lands in New York in a very different condition than that it is in when it reaches Buffalo? It is very much sweeter.

Mr. CONGER—If the people of Buffalo give sweeter grain I have no objection. But they charge thus much more for the simple mechanical process of handling grain. If boats come from the western lakes with their cargoes of grain a little damaged, is it not for the interest of those gentlemen engaged in this business that they produce as good an effect upon grain as it is possible by its being handled? When they charge two cents a bushel they only allow ten days' storage, as I understand it. Is not grain entitled to the small privilege of ten days or more of storage, especially when so much more is charged for the service of handling at Buffalo than is charged at the Atlantic docks in New York? But I have no fault to find with Buffalo. What I want to arrive at is a fair statement of all the impediments to the free transportation of grain. The gentleman from Onondaga talked about the competition of the lakes so eloquently and told us that one-eighth of a cent would turn trade. I wish to know, if that is the case, what will three-quarters of a cent do? But, as I said before, Mr. Chairman, I have no desire to bring up any unfair issue with my friends from the western part of the State who are so earnest in promoting this trade. I am perfectly willing that they should have a fair return from their capital, a fair profit from their business. But they come clamoring to load the State with a debt which I believe will amount to fifty millions of dollars, taxing my property, and withal the food that I and my fellow citizens in the southern tier of counties are to eat, and the grain that our cattle and our beasts of burden are to consume. I wish to know why we of the State of New York should be taxed so heavily to swell the profits of Buffalo and Oswego. It is a fair question. Further I wish to draw your attention to one very singular thing that I never could understand. Why it is that those who are engaged in the carrying trade are all the time varying their prices? Gentlemen have told us here, on this floor, that there is so much trade hurrying into Buffalo that the carriers' charges have at this present time been largely increased. I find on looking over this table of the auditor that in 1847 the carriers' charges for freight exceeded the toll \$1,182,771. We are told again that in 1856 the carriers' charges exceeded the toll which the State exacted, \$1,076,801. Not detaining you with all the figures, I find that in 1860 the freight exceeded the toll over two millions; in 1861 over a million and a half; in 1864, again, over two millions; and the year last past it exceeded the tolls over a million and a quarter of dollars. What does all this mean? Is there any statute regulating this matter? No, sir. The State of New York has left this thing entirely open to competition. Some-

times freights fall below the toll; but then when you come to look at it all the way through you find that the freights have exceeded the tolls from 1837 to the close of last year over ten millions of dollars. I was a little curious to know something about this, so I went to the auditor's office and obtained a statement of the tolls that were charged on flour and wheat per bushel, on corn, barley and oats, and on coal and lumber. I find that the tolls on a barrel of flour have run down from thirty-five cents, in 1843, to fifteen cents in the years 1858, 1859 and 1860. That is the period about which gentlemen complain so much as having effected unnecessary reduction of the tolls. The highest carriers' charge was in 1847, when forty-six cents were exacted on a barrel of flour from Albany to Buffalo; but the lowest charge in the whole period is sixteen cents in the year 1859. After that there is a gradual change in the charges; the highest subsequent prices having been reached in 1864, when the carriers charged thirty-four and one-half cents. Now, there has been exhibited some feverish disposition to investigate the causes which induced the canal board from time to time to lower the charges on flour and other grain. The reasons assigned for reducing the rates in 1859 and 1860 were the necessities of commerce. Although the gentleman from Onondaga [Mr. Alvord] found a great deal of fault with the action of the board in those years, I think a careful study of the results will show that the canals gained in trade, while the railroads fell off during those years. I find that the carriers' charge, coming down in 1859 to sixteen cents, was the next year raised to twenty-seven cents, the tolls imposed by the State remaining at the lowest figure at which they were ever put. I shall be glad to place this table at the service of any gentleman who would like to investigate this subject. I only wish to say that the toll remained as it was originally placed in 1843, until 1861, with the exception of five years, on a thousand feet of lumber. It was in 1861, 1862, 1863, one dollar and ninety-seven cents, and is now still further raised by the canal board to two dollars and twenty-nine cents. The toll on coal, which was uniform from 1847 and for thirteen years at thirty-five cents two mills, on two thousand pounds, has for the last seven years nearly doubled. I should like to know, if it were possible, what is the reason that while there is such a clamor from time to time raised about the ears of the State officers in favor of a reduction of the tolls, and the tolls are finally reduced, the rates of carriers' charges immediately go up? I wish to know whether the tolls are taken off in order to swell the profits of the carriers, or for the real benefit, either of the State or of the consumer. Now, before I leave this subject, I interpose what I omitted a few moments since, that the items of grain and flour, as shown by the auditor's table (on the supposition that the tax which is imposed on a barrel of flour at the ports of entry at the West is about the same as the tax that is imposed on the corresponding number of bushels of wheat), give for the last seven years 3,804,836 tons shipped at Buffalo for tide-water, 1,340,662 shipped at Oswego, and a beggarly fraction at Tonawanda, which may

lead you to some adequate idea of the taxes imposed at those ports for the mere handling and elevating of grain. My attention has been directed to the fact that ever since the reduction of tolls on grain, the carriers' charges have gone steadily up, with the exception of a few years, when the transporting railroad media were in a measure broken down. I have to detain you with another statistical statement by way of correction, to be applied to some columns in the auditor's tables, to which attention has been directed to show, while a large canal debt is staring us in the face, that the State has received such a magnificent revenue and profit on their cost, from its canals. Taking his tables at page 450 of the second volume of our Manual, and comparing them with those on page 422, you arrive at an entirely different conclusion as to profit or cost from that so boldly vaunted by the honorable gentleman from Onondaga [Mr. Alvord]. Taking, I say, the auditor's figures, I read from this table which I have prepared and is now before me:

Cost of construction,.....	\$64,710,836 94	
Int. on construction,.....	33,736,654 89	
Cost of repairs,.....	24,377,114 75	
Interest on repairs,.....	27,268,895 77	
		\$210,093,502 35
Tolls proper,.....	\$92,116,741 67	
Interest thereon,.....	100,339,037 90	
		192,455,779 57
Balance of cost,.....		\$17,637,722 78

from which it appears that the cost of construction of the canals was nearly \$64,750,000, the interest on the same nearly \$93,750,000, the cost of repairs over \$24,250,000, and the interest on the same \$27,250,000, in all, say, \$210,100,000, while the tolls proper, a trifle over \$92,000,000, added to the interest thereon, \$100,000,000 and over, make a sum total of nearly \$192,500,000, and showing a balance of cost unliquidated of over \$17,600,000. That seems to me a truer balance on which we may best account for the present very onerous canal debt. The gentlemen who say the canals have brought us a profit of thirty millions fail to tell us why it is that we are nearly twenty millions in debt on the canals. It is not material for our present purpose to show how much the Erie, Oswego and Champlain canals have earned, or how much the lateral canals have cost beyond their several earnings; since if you commence a new expenditure, no matter how you seek to control it in your financial article the result will practically follow, that the trunk canals will have to earn in the shape of tolls levied on the bread of the people, of larger amount or for longer time, moneys to provide for the payment of the increased indebtedness, and the laterals, envious of the huge sums expended along the centrals will crib from treasury stores. Now, Mr. Chairman, I add a few words in conclusion. At the commencement of my remarks I endeavored to give you a history of the first successful method devised in the State of New York in the provision of a constitutional amendment for enlarging the canals. I did it for the purpose of doing justice to the memory of the men who were engaged in the work, and especially, sir, to one who stood in the Convention of 1846, the friend of the people, a man of probity, with high sense of

honor and justice, who assisted his compeers in framing for us what was thought at that time to be a perfectly safe financial article. I think it is right, and just, and due to the labor which that honored man bestowed upon the constitutional amendment at the extra session of 1853, that he should have the credit, democrat as he was, of having originated the draft of that article and perfected the plan by which the present enlargement was effected. I confess, sir, that I did not like to hear the intimations that have been thrown out on this floor, that the policy of 1842, and the policy of 1846, and the policy of a reduction of the tolls in 1859 were inimical to the interests of the canals. Necessity is the parent of wisdom, and tolerates no gainsaying of its decrees. Sir, there are too many men in this Convention who are the legitimate successors and representatives of the men who stood up in 1846 and announced as their motto the "pay as you go" policy—too many such men, I say, stand in this Convention to renounce their original faith, much less to flout dishonor upon the services of the men who were engaged in that important controversy. It is fair and right that in this place we should remember not only what they accomplished, but what they attempted, and the prophecies they put forth. They said a system of enlargement, however commenced, if pushed by clamor or ambition beyond the avails in the treasury, would result in a wasteful expenditure of money, and a flagitious accumulation of debt. What are the statistics given you by the tables? [See page 143, vol. ii. of Manual.] They are, that up to the year 1866 you have paid for interest on the loans made for the work of construction, twenty-four and one-half millions of dollars; while the highest amount of the canal debt reached in 1860 was twenty-seven millions of dollars. Why is it that at such a time as this you propose to add to the present debt twelve or twenty millions of dollars, as the same will eventuate whichever way this plan is inaugurated, or into whose hands it may be committed, to say nothing of the fifty millions that must follow? Is that the way you propose to give the people of the State free trade and cheap food in these times and those which are to come? If you propose to add to your debt, you continue the necessity of accumulating large surplus revenues, and at small rates of interest in our sinking funds, to provide for the interest and the principal of that debt. Sir, look for one moment at what would be saved in cost on the value of food in the State of New York if the surplus revenues could be extinguished. If, instead of applying them to the payment of the principal and interest of your debt, you could take an equal amount off the tolls, and reduce these, and the cost on vegetable food, from three to one, I trust this committee will consider not only what may be politic along the central line, not only what may best respond to the loud-tongued cries of the West; not only look at what has been pompously threatened at the conventions assembled at Detroit and Chicago a few years ago, but that they will not allow themselves to be frightened by the holding up before their eyes of new navigable media through

Virginia and Canada. Give me an Erie canal free from debt. Let the French and English capitalists take up, the former the James river and the Kanawha canal, or the latter the Ottawa or the St. Lawrence route, and this little canal, so despised on this floor because it will not float boats of five hundred tons burden, will prove in the future the great wisdom of the old adage, that "a nimble sixpence is better than a slow shilling." Your small boats navigating a free channel unincumbered with debt, even if they are on the average of only one hundred and fifty tons burden, will surpass in availability to the people who consume the products they carry, the boats of heavy burden, plodding on in channels of more pompous pretension and more admired navigation, which carry also their heavier burdens of debt to capitalists who may have foolishly invested large sums upon them. The people of the State of New York having paid the interest and reimbursed the principal of these enormous debts with which their public debts are incumbered will have the Erie canal a free navigable stream, and thus honorably redeem the pledges made in the beginning. I am for putting the Erie canal in as good and efficient repair as the nature of the case demands, and at the earliest day practicable; I believe that the people of the State, the producing and consuming interest demand this, and execrate the present flagitious combinations of wily, debased and profligate contractors. The rings must be broken up, all their schemes declared felonious, and their *dissecta membra*, as well those which now stand out in the light as those obscured from present view, be cast out on the dung heaps of society. Stop your inordinate expenditures and give no premium to the vile scoundrelism which starts breaks upon the canals, that these impediments to your prosperity may be plunder for them. You were a half a million of dollars short last year, to meet the supplies of your sinking funds and the requirements of the Constitution, and you had to wring out from an overtaxed constituency the deficiency which the profligacy and imbecility of your public servants caused. Sir, the Finance Committee have done their work nobly. They have fortified the public credit by refusing to ignore existing pledges. They maintain and preserve inviolate the public faith plighted by the Constitution of 1846 to the creditors of the State. They do not say, as the gentleman from Onondaga [Mr. Alvord] did, that, as far as the general fund debt is concerned, it is only a transference from one pocket of the State to another, it is only a debt by the people of the State to the people of the State. Is that a doctrine, sir, to advance in these days and to proclaim when the general government is taxing every commodity to maintain its credit, that the debt contracted in defense of Union and national life is mainly a debt which the people of the United States owe the people of the United States? No, sir, stand by the plan of the Finance Committee and preserve from the breath of contempt and the rumor of repudiation your own great and glorious commonwealth, even though disaster and blight may fall thick and far all about it. Understand that your Finance Committee do not intend to tie up and fetter as the gentleman who preceded me

[Mr. Andrews] imagined, the future control of the revenues of the canals after the debt it has created has been discharged. They are to be left to the wisdom of those who come after us (just as the Constitution of 1846 designed) either to reduce so as to make our canals, repairs excepted, channels of trade as free as our inland seas, or to appropriate on the public works, as the people may then deem best. But, whatever else you conclude, resolve to pay your outstanding debts, for which your great property is pledged, now; now, in inflated currency it may be—now, while your revenues are overflowing and your commerce prosperous.

Mr. CARPENTER—As a member of the Finance Committee, I ask your indulgence, Mr. Chairman, and shall detail the committee only a short time, as in this long discussion I have been anticipated in much that I had designed to say. It will be remembered that four members of the Finance Committee did not give their unqualified indorsement to the article reported by the majority of that committee on the alleged ground that if it should be demonstrated that the capacity of the canals was inadequate to the demands of commerce, they should desire a modification of that article so as to provide for their enlargement. I was one of that number. Since that report was made, in addition to other sources of information of which I have been able to avail myself, I have examined the article reported by the Canal Committee and the arguments submitted therewith, and also the evidence produced as to the capacity of the locks and placed on the files of this body, and I have listened with strict attention to the arguments advanced in support of that article by the chairman of the Canal Committee [Mr. Lapham], and by the distinguished gentleman from Onondaga [Mr. Alvord], but instead of being convinced that the Erie canal is now inadequate to the demands of trade, I have been forced to the conclusion that its capacity is sufficient, not only for the present but for years to come. With four articles relating to State revenues referred to this committee, the issue is not upon a single amendment, but upon four distinct schemes of financial policy, all embraced within the scope of this discussion. In a financial article, to serve the required purpose, a two-fold object is desired—first, an application of the revenues, which it is hoped, through proper management, may be largely increased, to a speedy discharge of State liabilities; and secondly, the curtailment of expenditures until the people shall have emerged from an ocean of debt. The chairman of the Canal Committee has stated that the people of the State of New York should be as liberal, at least, as an individual in similar circumstances. I believe that the course which a prudent individual, who had become involved in pecuniary embarrassment, would pursue, is the course which the people of the State should now adopt. The farmer who has spent half his fortune in perfecting a questioned title, and who finds himself involved in debts which the labor and economy of years will be required to pay, uses the barn which he has, and does not mortgage his land still further and run deeper into debt, for the purpose of enlarging his barn, hoping thereby

to secure larger crops; nor does the merchant, whose incoming cargo has been shipwrecked, and whose liabilities are fast maturing, postpone the payment of those liabilities, and contract still other debts, for the sake of enlarging his store, in the hope of obtaining an increase of trade, but by prudence, economy and strict attention to business, he seeks to retrieve his fallen fortunes. And so, if I understand the temper of the people of the State of New York, while they are ready and willing to spend the last dollar for national integrity or State honor, they are unwilling to invest one farthing in mere speculation or experiment. The article reported by the Finance Committee, provides for the fulfillment of the existing guarantees of the Constitution to which the public faith is pledged, and requires the payment of the public debt at the earliest practical period, consistent with a partial alleviation of the people from the burdens of an oppressive taxation. At a time of undoubted extravagance, and of alleged venality, it seeks by proper restrictions upon public officers to enforce a just economy, and pave the way to general thrift; and in case of extraordinary expenditures, either for existing public works or for new enterprises, it provides that the people shall declare in the most direct manner the disposition that shall be made of their money. To these cardinal features of that article I give my support, believing that in so doing I shall act for the best interests of the people of this State. As between that article and the article reported by the Canal Committee, I may say, unqualifiedly, that I favor the former; I may say, further, that while not committing myself to every word and line, no scheme of financial policy has yet been presented which in my judgment is preferable to that reported by the majority of the Finance Committee. Now, the questions of finance and of canals are so intimately connected that it is impossible to discuss the one without at the same time considering the other; and therefore, inasmuch as the revenues of the State are derived principally from the canals, and as we may expect them to be so derived hereafter, it is proper to consider the canals with reference to the arrangement of the finances. The sole objection that seems to be urged thus far to the article submitted by the Finance Committee is based upon the ground that no provision is therein made for the enlargement or immediate permanent improvement of the canals. If such enlargement were proved to be necessary, I have already said I should favor it, and in that case I should give a most cordial support to the provision, therefore, in the article reported by the gentleman from Erie [Mr. Hatch]. He proposed the creation of a debt of \$7,000,000 for the purpose of enlarging the canal locks, which is a bold and direct manner of providing for the expenditure. But I believe, under pressure from other sources, that proposition has been abandoned, or to a certain extent merged in the report of the Canal Committee. The Canal Committee, by a system of indirection, recommend the expenditure of \$8,000,000, to be appropriated from their revenues, in the improvement of the canals, and thus they propose the continuance of a debt to that amount with its annual drain of interest, although they do not in

terms create one. By an appropriation of revenues, which may be applicable to the discharge of State liabilities, to another purpose, an additional debt is sanctioned, if not virtually created. Such in effect is the proposition contained in the report of the Canal Committee. Now, whether you divert the revenues from the payment of an existing debt, or from the object to which they are pledged, to the purposes of canal enlargement, or discharge that liability as good faith would require, and accomplish the new work by means of a loan and a corresponding debt, the same result is attained. You may sugar-coat the pill, but you do not thereby destroy its effect. The Canal Committee, however, felicitated themselves, and this morning the gentleman from Ulster [Mr. Schoonmaker] was very happy at the idea that there had been projected a magnificent scheme for canal enlargement, which could be carried through without subjecting the people to taxation, simply by the appropriation of \$8,000,000 of the revenues to that purpose. What difference does it make whether \$8,000,000 of revenue, which may be used in paying existing debts, be appropriated to that purpose, or whether canal enlargement be effected by direct taxation? You continue taxation, at least, to the amount of the interest on \$8,000,000, from which the people would otherwise be relieved. If necessary, I apprehend it is just as easy to pay tax for a canal debt as for any other debt; and if unnecessary, certainly no money should be thus appropriated. The laborer earns the mite which he contributes to the support of the government, just as easily if applied to the canal debt as if applied to the bounty debt. The farmer yields his hundred dollars after none the less toil and sweat, whether it be used to lessen a bounty debt or to enlarge the canals. The burdens upon the people are the same while the public debt continues, whether splendid schemes are carried through by appropriation of the revenues or by direct taxation. Regarding the canals, first, with reference to their liabilities, it appears there is no difference of opinion upon this question, except as to the advances made to their funds by taxation. The advocates of increased expenditure claim that these advances are not in the nature of a debt—that the people have made the advances and the people own the canals, and, therefore, while they have not the money in the treasury they have its equivalent in the canals. But you will bear in mind that each of the four articles to be considered by this committee provides that these advances shall be repaid at some time into the treasury of the State. In 1846, when a disposition of anticipated canal revenues for a series of years was made, it was provided that if the canals should fail to furnish the amounts which they were obligated to pay, the deficiency should be supplied by taxation upon the people of the State, and that the amount so advanced, with interest, should be repaid into the treasury. Now, the same pledge exists in regard to these advances that exists in regard to any other liability with which the canals are charged. So far as the canals are concerned, you might as properly release them from their other liabilities as to release them from their pledge to return these advances. There is the same constitutional

guaranty in each case. The people, in adopting the present Constitution, relied upon the express guaranty that if taxed to supply certain deficiencies occasioned by the failure of canal revenues, the amounts so drawn from them should be repaid into the treasury. I will admit that after these advances are repaid into the treasury of the State you can do what you choose with them—you can appropriate them to the discharge of the bounty debt, or any other debt, but you have no right to divert them from their just and due course to the treasury so long as they are canal revenues. After they are deposited in the treasury and become a part of the surplus funds of the State, then, of course, the people of the State can use them for whatever purpose they deem proper. The justice of diverting these advances from their proper direction before they reach the treasury is based upon the doctrine that might makes right—a doctrine that is a source of frequent injustice to tax paying minorities. Because it had been asserted by persons speaking in behalf of the report of the Committee on Finances that the State was largely in debt, and because those persons had attempted to exhibit the proportions and magnitude of that debt, the gentleman from Onondaga [Mr. Andrews], in his remarks this morning, insinuated the charge of repudiation. Sir, the incipient step toward repudiation consists in a violation of the strict injunctions of the Constitution in regard to the payment of liabilities, but never in a faithful adherence to its provisions. Now, Mr. Chairman, I desire to consider this subject for a moment in a more pleasing aspect—to regard the canals not with reference to their debts but with reference to their revenues, and here it is proper to consider the object of the canal system. The canals were originally constructed to a great extent for State development. From them the people of this State have undoubtedly derived large benefits. Population has extended in a westerly and northerly direction, the forests have given place to well cultivated fields, and flourishing cities are built upon recent hunting grounds; and in the eastern portion of the State the city of New York bears testimony to the advantages derived from our means of internal navigation. But the small amount of State products carried upon the canals show conclusively that they need no enlargement for the purpose of State development, in reference to which they are to be taken as a whole, and regarded as a complete system. But, sir, State development was not the sole object of the canal system. The people did not make these artificial rivers by an application of their means merely through pride or magnanimity, but the idea of gain possessed their minds during the time the canals were being constructed and enlarged—the motive which actuated, however honorable, was yet selfish. We are to suppose that the State constructed and enlarged the canals on account of a desire for its own prosperity, which was to be obtained in two ways; first, through trade and commerce, and, second, by revenue; and here we are to examine the relation of the State of New York to her sister States so far as commerce by the canals is concerned. And we are to regard the canals in their relations not only to the people of the State of New York

and the city of New York, but to the people of the Western States. In this view we cannot regard them as an entirety, because there are only two or three canals used for the transportation of western products, and the Erie is the one principally so employed. By the trade which is carried on between the Western States and the State of New York, the people of this State undoubtedly derive a very large benefit. Producers and consumers are reciprocal benefactors. In that respect, so far as the producers of the West and the consumers of this State are concerned, the canals are equally advantageous to both. And so far as producers solely are concerned, eight-ninths of the products that pass over that canal coming from without the State, the advantage is decidedly in favor of the western producers, and thus the Erie canal benefits eight producers of the Western States while it aids one in the State of New York. It contributes more undoubtedly to the producers of the West than to the consumers of this State, because the whole amount of the produce thus brought forward is not consumed in this State, but a considerable portion is transported to other States or foreign markets. Now, sir, if we look only to the advantage derived by the people of this State, and accruing to them from the carrying trade in the cheapening of cereals, and if we undertake to enlarge this canal, or to foster the canal system, simply with reference to commerce, we shall expend the public money for the benefit, not of the entire people, because a large portion will be so indirectly benefited that they would never be aware of it, but only for the benefit of those engaged in trade and commerce, and those who are the consumers of the products of the West. And moreover, we thus build up a system which brings the farms of the Western States in nearer communication with our metropolis, and therefore a system which is to a certain extent injurious, by competition, to the agricultural interests of our own State. To avoid any State action which favors only a portion of the people we should derive from the canals something more than the mere profits of trade, we should derive a revenue to be used to defray the expenses of government, or for the payment of any State liabilities, so as to alleviate the burdens of those who are not otherwise benefited by the canals. In that way, sir, by a system of moderate tolls and some revenue—moderate tolls, to entice and retain the carrying trade of the West, and a certain revenue to lessen the taxes of those not directly sharing in the benefits derived from the canals—we shall tend to make the canal system one which is beneficial not only indirectly to a portion, but directly to the entire people of the State. That the State has as certain a right to acquire revenue from the canals as an individual to profit from any business or trade, there can be no doubt. That right is based upon principles that cannot be disputed. The investment of capital in the canals renders it proper that that capital should afford an increase. The property of the State is merely the aggregate property of the individuals who have given their contributions, and that property should be augmented—increased should attend it as well under the control of the State, as in the hands of an individual. Again, the

risk incurred in the construction of these great public works is as valid and valuable consideration for any profit derived therefrom, as risk is a consideration for the gains of the thousands of corporations chartered for the purposes of insurance. The same principle that applies there, applies to risk in all other cases, whether on the part of the State, or an individual. If the State has a right to derive these revenues and to accumulate property from her public works, she has a right to dispose of her funds in any manner that is deemed proper, and this doctrine, though now denied by some, has heretofore been practically followed in the history of the State. In the first place, the Erie canal, being separate and distinct from the other canals, so far as the western carrying trade is concerned, the application of the revenue from that canal for the support and maintenance of certain others is a recognition of the right of the State to dispose of these revenues as she may desire. Again, the Constitution adopted in 1846 provided that two hundred thousand dollars from the canal revenues should be annually applied to the support of the State government, and also, after payment of the canal debt, that nearly seven hundred thousand dollars should be so applied. Still further, sir, even the Canal Committee, who seem to fear that the canals will be allowed to assist in paying the bounty debt, recognize in their article the very doctrine that the State has control over these revenues for any purpose whatever. The last section of that article provides that after certain other debts to which the canal revenues are pledged shall be paid, and after a certain enlargement, then the advances and surplus revenues of the canals shall be applied to the discharge of any then existing State debt. It follows, therefore, that even if no advances had ever been made to the canal funds, the claim on the part of the canals of a right to absorb their revenues is not paramount to the claim upon those revenues by any other State object. Now, sir, I wish to glance for a moment further at the reports that have been submitted to the Convention and referred to this committee. With the views which I have expressed as to our canal policy, favoring as I do a proper canal system, and believing that speed will continue to offer less inducements to shippers of bulky and low-priced commodities than cheapness of transportation, I desire to state some further reasons that have occurred to me why none of the articles offered as substitutes for that of the Finance Committee should be adopted. First, I refer to the report of the gentleman from Monroe [Mr. Clarke], which provides that after the debt shall have been paid, no tolls shall be imposed for transportation above an amount sufficient to keep the canals in ordinary repair. The theory which he advances is that the canals have served their purpose, and are to be regarded as a completed institution, and that they will no longer need the fostering care of the State, except for ordinary repairs. He arrives at the same conclusion with the gentleman from Erie [Mr. Hatch] in regard to the future imposition of tolls, although from a different stand-point. In considering the position taken by the gentleman from Erie [Mr. Hatch], I

shall state why I regard as fallacious certain views expressed in his report in regard to the purpose of the canals, and the inapplicability of their revenues to other objects. The gentleman sets forth with much earnestness the opinion that the tolls levied are a tax upon the necessaries of life. I do not regard them in that light, Mr. Chairman, but, even if they are, I do not know that this State is bound to manage her canals as a charitable institution, constructed to furnish the necessities of life, free from transportation charges, not only to the people of this State, but to the other States, and to the markets of Europe. He also asserts that the canal tolls are a tax upon commerce, and therefore bad policy for the government and unjust to the people, and quotes the opinion of the immortal Michael Hoffman to sustain that view, and also in support of the doctrine that no tolls should be levied for the support of State government, or for the payment of any but a construction debt. As quoted, Mr. Hoffman says, "neither in form or substance do I accede to the doctrine that the canal tolls shall be taken for general purposes. I deny it. The right of way is the right of the million. The sovereign holds it in trust, and can exercise it only for their benefit, and has no right to make a revenue out of it." The gentleman from Orleans [Mr. Church] has also expressed the opinion that the right of transit over the canals, so soon as their debts are paid, should be entirely free from revenue tolls, and I concur mainly in that gentleman's financial conclusions after a different process of reasoning, and with a very different view of canal policy. In my judgment, the tolls imposed upon produce transported over the canals, are in no respect a tax upon commerce, but to a certain extent a bonus or gratuity offered to commerce. Suppose, for instance, by railroad the cost of transporting a ton of produce from Buffalo to New York were ten dollars (and that is the cheapest mode of transit except by canal), and by canal we will suppose the cost to be six dollars. The six dollars charged are not a tax upon commerce, but on the contrary, the four dollars, being the difference between the canal and railroad transportation charges, are a gratuity offered to commerce. Suppose the cost per ton by canal is six dollars, one dollar of which goes to the State as toll—what is the result? It is four dollars offered as a bonus to commerce rather than a tax upon it, considering the cost of transportation by canal in comparison with the cost by any other mode of conveyance—four dollars given to commerce and one dollar as revenue to the State. If the State has no right to derive revenue from the canals she certainly has not from any other source. She would have no right to charter railroad companies and permit them to accumulate money from carrying western produce, and she would have no right to derive a particle of revenue from the salt works, or from auction duties, or from any other source. Now, what is the nature of this doctrine that the right of transit over our canals should be entirely free to western produce? For the purpose of stating the instructions given to us by certain tradesmen of the Western States, I will quote from the report of Mr. Hatch an extract which he gives from the report of the

commercial conventions in Chicago in 1862 and in Detroit in 1865:

"Public sentiment requires and has a right to demand that the State of New York shall hold this great thoroughfare—this connecting link between the East and the West—not for local aggrandizement or State revenue, but as the trustee of the nation, and impose only such tolls on commerce as shall be required to preserve the integrity of the work and ultimately pay the cost of construction."

The argument advanced by some gentlemen who now favor canal enlargement, commences with the assumption that the States owe to each other certain duties, from which it is concluded that New York should furnish to the Western States better and cheaper facilities for transportation. If such a duty exists, it must be reciprocal—if we are bound to furnish canals for the Western States they are bound to patronize them. If we should simply impose tolls sufficient to pay for the construction, it would be their duty to pay sufficient tolls to reimburse us for that cost. The real argument advanced for canal enlargement is based simply upon the apprehension that if the Western States, after all the expense we have incurred in constructing and improving the Erie canal, could transport their cereals to market one cent per bushel cheaper by any other route, they would that very moment abandon our canals, and even patronize Canada in preference to New York. This shows what relations of duty, as to the benefits of trade, practically exist between the different States. No State enters upon a system of internal improvement without some idea of gain or aggrandizement. And the very doctrine advanced by several gentlemen that it is our duty to furnish to the Western States the best means of transit for their property through this State, is the doctrine that will tend to construct the Niagara ship canal, the anticipated construction of which they appear so ardently to deprecate. If for the sake of cheap transportation of the produce of the West we are bound to enlarge the Erie canal, then if western shippers can transport their property more easily by means of the proposed Niagara ship canal, the same argument that is sometimes advanced here in favor of cheap transportation over existing canals, would favor the construction of another canal which might allow transportation without breaking bulk for cargoes of fifteen hundred tons burden, directly to the port of Liverpool, and the State of New York would receive no benefit whatever. From what I have already said it may be inferred that I am opposed to the adoption of the article reported by the Canal Committee; first, because it tends, by diversion of revenues to new expenditures to prolong the debt already existing beyond a time when it could be paid by means of the revenues derived from the canals, or by means of the repayment of the amounts advanced for canal purposes; and, secondly, because it disregards the injunctions and pledges of the existing Constitution with reference to those advances. I would consider the adoption of that article improper even if there were proved a lack of capacity in the canals. To show the persistence with which the Canal Committee have sought for arguments to sustain their article, I refer to two paragraphs of their

report in which they state their reasons why the canals should be enlarged, and why the revenues should not be applied to the payment of the bounty debt. The committee say "The Western and North-Western States have not only contributed largely to our revenues, through the canals, as shown by the preceding tables, but during the war they devoted of their blood and treasure, their full share to support the national cause. It would be unjust and unbecoming the policy of this great State to tax their products while seeking the market through our canals, for the purpose of paying the portion of such expenses incurred by us." The Chairman of that committee raises a shout of indignation against those in this State who would apply the amounts heretofore advanced to, and which are now justly demanded from, the canals, to the discharge of the bounty debt, and I have just read the expression of his views upon that subject. Is not this the correct version of the rights of the people. Shall the people of the State of New York be taxed to pay their bounty debt, and receive no aid from canal revenues, while the people of the Western States are enabled to pay theirs by money which they accumulate through cheap transportation over canals constructed and enlarged entirely at our own expense? That seems to me a proper statement of the equities of the case. Another reason which the Canal Committee give, is this: "The debt (referring to the war debt) is one which the people are pledged by a direct vote to pay, and will pay, if necessary, by taxation. They will cheerfully submit thereto on condition they are hereafter to realize the full fruits of the contest in which the debt was incurred—a nationality purified and strengthened and States enjoying reciprocal and mutual intercourse." That is, in my judgment, no reason or argument why the war debt should not be made as little burdensome as possible. It can hardly be suspected that any persons, for the sake of canal enlargement, have entered substantially into such a scheme as this (and I suppose a case): "Here are revenues which can be appropriated either to the payment of the war debt or to the enlargement of the canals; we will appropriate them to the latter purpose. Then, if any citizen of the State raises an objection to being so heavily taxed, we can raise the cry of 'copperhead' and 'traitor' and silence him into acquiescence in any measure on the allegation that he is opposed to the payment of a sacred war debt." Sir, I know that the people of this State submitted cheerfully to the burdens imposed upon them during the war; but I believe that their patriotism should be honored and encouraged, and that their alacrity in running into debt for the success of the national cause at that time should not be made an excuse or pretext for thrusting other debts upon them. I know that they are willing to pay the bounty debt by taxation, but if there are any other means by which it can be paid, and thereby they be, to a certain extent relieved from taxation, I know they are anxious, now, if ever, to receive that aid. Patriotism should be honored and encouraged, and should not be trifled with or used as a cover to projects for canal enlargement. Now, if there were a possible doubt as to the

capacity of the Erie canal to meet the demands that commerce may make upon it, I should be opposed to incurring any debt or causing any further taxation, or diverting revenues from their proper objects for the purpose of its enlargement at the present time. But I think that it has been shown beyond all peradventure that there is no possible doubt in reference to its capacity, and the gentleman from Onondaga [Mr. Andrews] this morning demonstrated so conclusively that the capacity of that canal had not been reached, that I deem it unnecessary to pursue the inquiry further. I will say however, that all the official statements which we have heretofore had in regard to the capacity of the Erie canal, place it at a much higher amount of tonnage than has yet passed over it. If the Canal Committee succeeded in proving anything by the evidence adduced, it was this, not that the canals were inadequate to the present demands of commerce, not that the locks or prism of the canals should be enlarged, but simply that some of the boats had been made too wide for an easy and rapid passage through the locks. The issue raised by the testimony which the Canal Committee have offered is this: Shall the State expend eight millions, or eighteen millions (to which amount the cost would probably be increased) to enlarge the canal locks as a matter of experiment, or, in the future, shall not the boats be built a trifle narrower? Shall one hundred double locks be enlarged at the enormous expense stated, because some bungler has built his boats six inches too wide, or shall the boats hereafter be constructed with reference to the size of the locks? It does not require a great deal of learning to determine that question, and I think common sense would not dictate an enlargement of the locks. The gentleman from Onondaga [Mr. Alvord] in the eulogy which he passed upon certain routes of transit; for instance, from Norfolk to the Ohio river, from the source to the mouth of the Mississippi, and from Chicago, through the lakes and St. Lawrence river, to the ocean, and in the demonstration which he gave of the ease and cheapness with which produce could be passed over those routes, succeeded in proving to my mind this one fact, that we shall not probably, however much we add to our facilities, secure as large an increase of western trade as might be expected from our previous history and experience. The tested capacity of the canals under bad management must prove a greater capacity under good management. Under bad management (for no one disputes the fact that the management has been bad) we have had transported the entire length of the Erie canal in one year at least half a million of tons more than have been transported during the past year. When poison is infused at any pore of the human body the virus extends through the whole system and tends to corrupt and destroy it; and, in the same way, the poison of corruption infused into the canal system at any part, into the contracting board, for instance, must extend more or less through the entire system, paralyzing its energies and destroying its efficiency. I do not believe that occasional delays, even if not fully accounted for by other causes, prove an inadequacy of the canals, because if you were

to double the size of the locks, taking as correct the theory of the gentleman from Onondaga [Mr. Alvord]—although the gentleman from Orleans [Mr. Church] has shown from the record that lockages are almost equally distributed during the different months—the theory that the crops of the West are hurried to market late in the autumn, and the cereals threshed out in winter are forwarded in early spring, you would still find equal delays, because in the belief that there was no limit to the means of transportation, western producers, instead of sending their commodities to market by degrees, would sometimes make their shipments almost simultaneously. Take a barge on one of our rivers for illustration—it might have but a quarter of a cargo for twenty trips, but in the last trip it is sure to be loaded to the water's edge, and then leave behind produce that might have been shipped two months before. I believe if there were any inadequacy on the part of the canals to meet the demands of commerce, we would hear of it from business men in all parts of the State. The canals do not serve a merely local purpose, but the inhabitants of the eastern cities are as much interested in them, as are the people of the county of Erie, or Ontario, or Onondaga. And, sir, the keenness of business men, whose wits are sharpened by their interest, would detect and point out any insufficiency in the canals more readily than would the theoretic vision of the statesman. If there were any want of capacity, petitions would be showered upon us not only from the West, but petition after petition would come up from the eastern portion of the State demanding enlargement; but not a petition has been heard of on the subject. What then is the proper policy of the people of this State? What might be deemed laudable enterprise at a time when the people were in the full tide of prosperity, and the treasury crowded with surplus money, might be folly or recklessness at a time of general and large indebtedness. I shall enter into no detail of the national, State and local debt, for the gentleman from Orleans [Mr. Church] has sufficiently portrayed the magnitude of that debt as a warning against lavish and improvident expenditure. But, sir, we cannot afford any speculative canal enlargement, and I regard not otherwise than as speculative any enlargement which is not based upon the present known demands of commerce, or upon the certainty of securing a corresponding increase of trade. Before entering into any project for enlargement you should first purify the management of the canals. Purify the management, so that it cannot be alleged, with any show of plausibility, that bids made by uninitiated contractors are certain to be pronounced informal, while contracts are awarded to members of a supposed ring at rates almost ruinous to the State. Purify the management so that prominent public officers, when called upon to testify whether they have improperly received any money in an official capacity, will not avail themselves of the privilege of non-self-crimination and refuse to answer. Until such purification is undertaken and carried forward with an earnestness that presages success, I believe that the people will prefer for some time to run the risk of higher prices and smaller trade rather than

invest more largely in the canals of the State. Above all, it would seem improper in this Convention to force through a provision for enlargement at the instance of perhaps a few contractors, who are not so much interested in the legitimate business or legitimate benefits of the canal system as in the process of improvement and enlargement and in the crumbs that are picked from its general management. Whenever such enlargement shall become necessary and proper we may rest assured that no financial provisions, however stringent, in the proposed Constitution can prevent it. Regarding the feeling of prudence and caution that now seems to pervade the public mind, I do not believe that the appropriation in the proposed Constitution of \$8,000,000, or any other sum, to what would be regarded as an unnecessary purpose, could receive the sanction of the people. There is agitating the public mind at the present time a question more momentous than that of the canals. The people are endeavoring to solve a problem of the most vital importance now and in the future, namely, how to work out an honorable release from the burdens of an exhaustive taxation. Only one practical form of solution presents itself, and that is to maintain unimpaired the public faith, preserve the public credit and pay the public debt, and when that is done they will be prepared, on a sound and solid basis, for a new and more extended career of prosperity. I do not think that the amendment offered by the gentleman from Erie [Mr. Verplanck], to which, to a large extent, my remarks have been addressed, should be adopted unless the Convention propose to release the canals from all pledged liabilities both to the treasury of the State and to the public creditors. If that amendment should be adopted, consistency will require us to strike out the entire first section of the article reported by the majority of the Finance Committee, and insert in place of it a declaration that the canals are subject to no liabilities whatever.

Mr. BARNARD—Mr. Chairman—

Mr. SILVESTER—Will the gentleman give way for a motion that the committee rise?

Mr. BARNARD—I will.

Mr. SILVESTER—I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Silvester, and it was declared carried.

Whereupon the committee rose, and the PRESIDENT resumed the Chair in Convention.

Mr. SMITH, from the Committee of the Whole, reported that the committee had had under consideration the reports of the Committees on Finance and on Canals, had made some progress therein, but not having gone through therewith, have instructed their Chairman to report that fact to the Convention and ask leave to sit again.

The question was put on granting leave to sit again, and it was declared carried.

On motion of Mr. A. F. ALLEN, the Convention adjourned.

FRIDAY, September 6, 1867.

The Convention met at nine o'clock A. M.

Prayer by the Rev. WILLIAM S. BOARDMAN.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. ANDREWS—I desire to ask leave of ab-

sence for Mr. Beadle, of Chemung, until Wednesday.

There being no objection, leave was granted.

Mr. GOULD—I ask leave of absence for myself from Monday next, during the trial of agricultural implements before the State Agricultural Society at Utica.

There being no objection, leave was granted.

Mr. CLINTON—I ask leave of absence for Mr. Kinney, of Tioga, until Tuesday evening's session.

There being no objection, leave was granted.

Mr. FLAGLER—I ask leave of absence for myself until the sitting of Monday evening next.

There being no objection, leave was granted.

Mr. N. M. ALLEN—I ask leave of absence for Mr. Van Campen until Tuesday evening next.

There being no objection, leave was granted.

Mr. VEEDER—I desire to ask leave of absence for Judge Parker until Monday next. He is absent attending the funeral of a relative.

There being no objection, leave was granted.

Mr. VAN GOTT—I desire to ask leave of absence for Judge Daly until Wednesday next.

There being no objection, leave was granted.

Mr. FRANCIS presented the petition of Dr. James Thorne and others, citizens of Troy, praying for the abolition of the corporation known as the Regents of the University of the State of New York.

Which was referred to the Committee on Education.

Mr. BICKFORD gave notice that on Wednesday next he would move to reconsider the order of the Convention of the 22d of August, by which the article on counties, towns and villages was referred to the Committee on Revision.

Which was laid on the table under the rule.

Mr. BURRILL—I ask leave to submit a minority report upon the powers and duties of the Legislature.

The PRESIDENT—No objection being made leave is granted.

Mr. BURRILL proceeded to read the report as follows:

Additional minority report of the Committee on the Powers and Duties of the Legislature, except as to matters otherwise referred.

The undersigned, having been prevented, by the illness and necessary absence of one of their number, from making the minority report, submitted by them to the Convention, as full and complete as it had been their intention and desire to do, beg leave to submit the following or supplemental report on their behalf. Their former report was based upon the financial estimates submitted by the comptroller of the city of New York to the common council of said city, in which were estimated as near as might be the amounts of money necessary to be raised for city and county purposes. In such former report the undersigned showed that the total amount required according to such estimates to be raised by taxation for the support of the city, county and State governments, for the year 1867, was seventeen million five hundred and ninety-three thousand nine hundred and forty-one dollars and nineteen cents (\$17,593,941.19), and that of said amount the sum of fourteen millions three hundred and eight thousand two hundred and ninety-six dollars and twenty-eight cents (\$14,308,296.28) was

disbursed by State officials, who were in no way responsible for the expenditure of this vast amount. In such report the undersigned also showed that the amount required to be raised for the same year for city purposes alone, was eleven million one hundred and five thousand eight hundred and fifty-eight dollars and eighty-six cents (\$11,105,858.86), and that of this amount, the sum of six million sixteen thousand one hundred and fifty seven dollars and sixty-one cents (\$6,016,157.61) was disbursed by State officials.

It will be thus seen that the amount which the common council of the city desired and considered it necessary to raise for city purposes, was the sum of \$11,105,858.86, which was only four thousand and fifty-six dollars and thirty-four cents more than the comptroller's estimates for the same purpose, as appears from the following statement:

Common council requested, \$11,105,858 86
Comptroller's estimate, 11,101,802 52

\$4,056 34

This amount of \$11,101,802.52, was composed of the following aggregates, the items of which were given in the former report:

This sum, pages 6 and 7 of the former report, \$6,016,157 61
This sum, page 8 of same, 3,769,664 22
This sum, same page, 623,560 00
This sum, same page, 692,420 69

\$11,101,802 52

This, it will be borne in mind, was merely the sum required for city purposes, and did not embrace the amount required to be raised for county purposes, for which the board of supervisors provide, and which amount was shown by the former report to have been estimated at \$8,292,138.67, and which, therefore, swelled the amount to be expended to the sum of nineteen million three hundred and ninety-three thousand nine hundred and forty-one dollars and nineteen cents (\$19,393,941.19), which left, after deducting therefrom the income of the corporation, the sum of \$17,593,941.19 to be raised by taxation, according to the estimate then submitted by the comptroller, and which did not include several items subsequently provided for. The ordinance which was passed by the common council, and authorized the raising of the amount of \$11,105,858.86 was submitted to the Legislature, and that body added to it the sum of one million four hundred and nine thousand three hundred and eighty-one dollars and eighty-seven cents (\$1,409,381.87), for accounts not included in the estimate of the comptroller, or the ordinance of the common council; and also added the further sum of one hundred and sixty thousand two hundred and two dollars (\$160,202) by increasing the amounts of items which were so included, neither of which, addition or increase, was asked for or deemed requisite by the local authorities; and the Legislature also diminished the amounts of other items of appropriation deemed necessary by the common council by the sum of five hundred and eighty-one thousand five hundred dollars (\$581,500), so that by the action of the Legislature there was added to the sums required to be raised for city

purposes the sum of nine hundred and eighty-five thousand and eighty-three dollars and eighty-five cents (\$985,083.85); thus making the aggregate amount to be paid by the citizens of the city of New York for city, county and State taxes for the year 1867 the sum of twenty million three hundred and seventy-nine thousand twenty-five dollars and four cents, which, with the exception of less than three millions, is disbursed and expended by State agencies. The following table will show the amounts added by the Legislature as above stated:

Archiving the cut in Fourth avenue, \$100,000 00	
Central park, maintenance, etc., ar-	
rearages,	41,095 00
Cleaning streets by board of health,	25,000 00
Donations (special),	195,500 00
Expenses of market commission,	
eighteenth ward,	8,000 00
Fireworks for public celebrations in	
1865-6,	29,000 00
Grading Hamilton square,	30,000 00
Inebriate asylum,	100,000 00
Judgments,	414,269 87
Legal expenses—T. Stephens and	
R. L. Darragh,	4,500 00
Monument in Greenwood cemetery,	30,000 00
Repaving Broadway,	390,817 00
Repairs to street pavements,	10,000 00
Salaries for bureau of prevention	
of fires,	27,200 00

Total, \$1,409,381 87

The following items of appropriation allowed by the common council, were increased by the Legislature, as follows:

Advertising,	\$20,000 00
Aqueduct repairs and improvements,	20,000 00
Cleaning streets under contract,	477 00
Cleaning markets,	6,500 00
City dispensaries,	1,000 00
Contingencies—comptroller's office,	5,000 00
Contingencies—law department,	15,000 00
Contingencies—Croton aqueduct	
board,	6,000 00
Real estate expenses,	20,000 00
Salaries—department of finance,	28,500 00
Salaries—Croton aqueduct depart-	
ment,	500 00
Salaries—board of assessors,	9,225 00
Streets—repaving and repairs, ...	30,000 00

Total, \$162,202 00

The character of this legislation will be shown by an examination of some of the items thus added by the Legislature, and which it compels the city and county authorities to raise by taxation; and such examination will not only show how unfit and incompetent the Legislature is to determine for the citizens of New York what amount they need for the expenses of their city and county government, but will also show that the exercise of this power, against which we protest, furnishes opportunity for corrupt and dishonest action on their part.

The first item in the list is \$100,000 for arching the cut in Fourth avenue, through which the Harlem railroad company passes. This imposes upon the people of the city the cost of building a wall from Seventy-ninth to Eighty-ninth streets,

and arching from Eighty-ninth to Ninety-second streets, along and over the tracks of the company, which are laid in the center of the said Fourth avenue, at depths varying from twenty to fifty feet below the grade, and which, by the terms of their charter from the city, the company is bound, at its own expense, to arch, or fence, or otherwise protect, as they may from time to time be directed by the city authorities. The Legislature has thus relieved the company from one of its just liabilities to the city and the owners of property on the Fourth avenue, between the points above indicated, and has generously removed the burden from the shoulders of the railroad company to the pockets of our tax payers. on the principle, doubtless, that being the more numerous, it was charitably supposed they were the best able to bear it.

The fourth item added by the Legislature is the sum of \$195,500, donated for charitable purposes, so that the citizens of New York are now compelled to raise by taxation such sums as the Legislature of the State may deem proper to appropriate for charitable objects. They are not willing to confine themselves to the appropriation of the moneys of the State for such purposes, but assume the power of dispensing charity on behalf of the citizens of the city of New York, and of compelling such citizens to pay whatever they may deem proper to bestow.

Were the Legislature thus to interfere with the people of the rural districts and their property, and compel them to raise money for such charitable objects as the Legislature might deem worthy of relief, there would be a cry of indignation from one end of the State to the other; but so long as the power is exercised only over the citizens of the city of New York, it does not seem to excite any special interest on the part of the people of other portions of the State, and is not deemed sufficiently important to insure that active interference on behalf of the citizens of that city, which the magnitude and the extent of the injuries inflicted so justly demand. How much longer the people of the city of New York will submit quietly and tamely to this unwarranted and outrageous interference with their property and just rights, is a question more easily put than answered. The following list will show what objects of charity were permitted to share in the sum of \$199,500, so extracted from the pockets of the citizens of the city. What were the influences and arguments, which were brought to bear upon the members of the Legislature, to induce this extraordinary action on their part, we leave others more and better acquainted with Legislative manipulations than we profess to be, to inform us.

Donations (Special).

For donations to the following named institutions, to wit: to St. Francis' hospital, five thousand dollars; ladies' union aid society five thousand dollars; to St. Joseph's Asylum, five thousand dollars; to the House of the Good Shepherd, five thousand dollars; to the New York women's medical college and hospital for women and children, in the city of New York, five thousand dollars; to the society for the

relief of destitute children of seamen, five thousand dollars; to the ladies' union relief association for care of indigent soldiers and their families, five thousand dollars; to the house of mercy, twenty-five thousand dollars, on condition that a like sum shall be raised from private sources; to the ladies' home mission, Five Points, five thousand dollars; to the Five Points house of industry for the erection of a workingwomen's home, twenty-five thousand dollars, on condition that the same amount be raised by private subscription during the year 1867; to the New York female assistance society, fifteen hundred dollars; to the institution of mercy, in Houston street, thirty thousand dollars, on condition that the same amount be raised by private subscription during the year 1867; to St. Bridget's school, ten thousand dollars; to St. Stephen's school, Twenty-eighth street, five thousand dollars; to St. Gabriel's school, Thirty-seventh street, five thousand dollars; to the Holy Innocent's school, Thirty-seventh street, near Broadway, five thousand dollars; to the school attached to St. Peter's church, five thousand dollars; to St. Mary's school of the seventh and thirteenth wards, five thousand dollars; to St. Theresa's school in Rutgers street, near East Broadway, five thousand dollars; to the school attached to the Transfiguration church, five thousand dollars; to the young men's christian association of New York, five thousand dollars; to the New York prison association, three thousand dollars; to the New York society for the relief of the ruptured and crippled, twenty-five thousand dollars, upon condition that the same amount be raised from private sources—one hundred and ninety-nine thousand five hundred dollars (\$199,500).

The item of \$3,000, expenses of market commission, eighteenth ward, is for salaries of commissioners, and counsel fees of the market commission, appointed by chap. 120, Laws 1866. The item of \$4,600 was for the counsel fees of T. Stephens and R. L. Darragh, claiming under the act of 1866, chap. 876, for resisting an application for mandamus made by J. J. Bradley, claiming the office of president of the Croton board, under an appointment of the mayor and aldermen of the city. Sufficient has already been said to show the character of the legislation to which the city of New York is subjected, and for the exercise of which we say there is no right or authority. Where did the Legislature of this State acquire the right to supervise the proceedings of the city authorities of the city of New York, to provide the ways and means for their city government? By what right does the Legislature compel the city of New York to send her tax levy to the Legislature for approval or amendment? Does the Legislature exercise such power over any other city in the State? Is there any other city than New York which is prohibited from determining for itself what money is required for municipal purposes, and what money shall be raised therefor? Is there any other city in the State from the pockets of whose citizens moneys are extracted by taxation to pay appropriations made by the Legislature for charitable purposes? Where did the Legislature get the power to give away \$199,500 to charitable

institutions, and compel the city of New York to raise that money by taxation?

We submit that the Legislature have no such right, power or authority, and that the organic law of the State should so state in such clear and unmistakable language as will prevent this usurpation and tyrannous exercise of such authority. The Legislature have never claimed this authority until within a comparatively short period, and since it has claimed and exercised this right, the amount which the city of New York has been compelled to raise annually by taxation, has steadily and enormously increased.

The following table exhibits the total amount of money required for the support of the government of that city, as estimated and authorized to be taxed upon our people by the State Legislature, for each year, from 1862 to 1867:

1862.....	\$6,908,096 36
1863.....	7,235,001 83
1864.....	8,770,971 95
1865.....	10,802,455 87
1866.....	10,889,901 11
1867.....	12,090,942 73

Increase.

1863 over 1862.....	\$327,004 47
1864 " 1863.....	1,535,970 12
1865 " 1864.....	2,031,483 92
1866 " 1865.....	87,445 24
1867 " 1866.....	2,201,041 62

The following table, prepared at the office of the comptroller of the city of New York, needs no explanation other than to state that the items for 1867, are estimated amounts which we have shown were fully realized.

STATEMENT showing the amount of taxes levied for the support of the city and county government, for the years 1857 to 1867, inclusive; the amount paid for State taxes, and for the common schools of the State; also exhibiting the amount received from the State Treasurer for the county's proportion of the free school fund and common school fund, and the amount paid to different commissions for the same period.

YEAR.	Tax Levy.	COMMON SCHOOLS FOR STATE.	
		Amount paid to State.	Amount received from State Treasurer for county's proportion of school money.
1857.....	\$3,066,566 52	\$383,805 37	\$152,245 06
1858.....	8,621,091 31	238,063 90	160,069 75
1859.....	9,360,926 69	308,416 98	153,582 95
1860.....	9,746,569 58	399,677 61	213,866 18
1861.....	11,627,254 23	412,559 00	212,768 09
1862.....	9,906,271 10	428,309 10	265,881 20
1863.....	12,091,905 14	401,132 71	250,616 99
1864.....	13,705,092 86	410,562 02	252,265 54
1865.....	18,202,857 56	432,000 12	260,896 82
1866.....	16,950,767 88	466,946 28	242,280 04
1867.....	21,889,655 98	455,088 27	247,441 58

STATEMENT showing the amount of taxes levied, etc.—(Continued).

YEAR.	Amount of State taxes.	AMOUNT PAID TO THE FOLLOWING COMMISSIONS.	
		Board of education.	Police.
1857,...	\$511,740 50	\$1,100,210 81	\$841,100 00
1858,...	1,172,644 31	1,226,013 00	908,298 60
1859,...	929,590 00	1,246,000 00	1,229,865 00
1860,...	952,581 98	1,278,781 00	1,359,625 00
1861,...	1,696,076 32	1,300,000 00	1,650,500 00
1862,...	1,784,621 24	1,358,435 00	1,738,712 00
1863,...	2,139,424 44	1,450,000 00	1,748,320 00
1864,...	2,326,518 13	1,787,000 00	2,068,420 67
1865,...	3,592,000 73	2,298,508 58	2,214,556 56
1866,...	2,435,903 09	2,454,327 54	2,173,784 70
1867,...	2,920,149 50	2,939,348 00	2,608,554 99

STATEMENT showing the amount of taxes levied, etc.—(Continued).

YEAR.	AMOUNT PAID TO THE FOLLOWING COMMISSIONS.		
	Public charities and correction.	Commissioners of record.	Central park, maintenance and government of.
1857,.....	\$843,800 00	\$350,000 00	.....
1858,.....	705,000 00	50,000 00	.....
1859,.....	780,250 00	.....	.....
1860,.....	746,199 00	.....	\$80,000 00
1861,.....	668,275 00	.....	114,000 00
1862,.....	679,173 00	.....	118,841 00
1863,.....	560,000 00	118,125 22	131,604 00
1864,.....	760,000 00	.....	180,000 00
1865,.....	988,450 00	.....	188,121 00
1866,.....	1,067,889 08	100,000 00	264,779 93
1867,.....	1,165,267 51	.....	241,095 00

STATEMENT showing the amount of taxes levied, etc.—(Continued).

YEAR.	AMOUNT PAID TO THE FOLLOWING COMMISSIONS.			
	Harlem or Third avenue bridge.	Metropolitan department fire fund.	Market in 18th ward.	Metropolitan board of health.
1857,.....	.....	.....	.....	.....
1858,.....	.....	.....	.....	.....
1859,.....	.....	.....	.....	.....
1860,.....	.....	.....	.....	.....
1861,.....	.....	.....	.....	.....
1862,.....	.....	.....	.....	.....
1863,.....	.....	.....	.....	.....
1864,.....	.....	.....	.....	.....
1865,.....	\$236,494	\$600,000	\$10,000	.....
1866,.....	186,876	870,000	8,000	\$231,000 00
1867,.....	87,000	780,000	8,000	99,878 47

The undersigned deem it proper to call attention to the following facts, which appear in the last report of the State Comptroller:

1. That the equalized valuation of the property in the city of New York is two-fifths of that of the entire State.

2. That of the aggregate of county taxes throughout the State, New York pays two-fifths.

3. That of the school tax, New York pays two-fifths of the amount collected from the entire State.

4. That of the State tax, New York pays two-fifths of the entire amount collected throughout the State.

5. That the aggregate amount raised by taxation throughout the State for 1866 was \$40,568,244.69; say in round numbers forty millions and a half, and of this New York paid \$17,423,156.48; say in round numbers seventeen millions and a half, which is more than two-fifths of the entire amount.

ANTHONY L. ROBERTSON,
JOHN E. BURRILL.

Which was referred to the Committee of the Whole, and ordered to be printed.

Mr. FRANCIS—As one of the Committee on Cities I beg to submit a minority report.

The PRESIDENT—No objection being made the report will be received.

Mr. FRANCIS proceeded to read the report as follows:

Mr. President: As one of the Committee on Cities, I wish to say that I disagree with the report of the majority in this: That it proposes the establishment within the State, under the name of city governments, of local sovereignties, superior to, above and beyond the control of the State itself—thus practically applying to the State of New York the same obnoxious doctrine which the rebels of the South sought to enforce for their States, with respect to the Union. This whole idea of city independence from the State control is the same in principle as the old Southern idea of State independence of federal authority. It belongs to the same pestilent family, and carried out in practice, would involve the State in perplexities, dangers and possible future calamities, even as we have seen its disastrous results worked out in the collision of States with the sovereignty of the Union. For one moment consider the question in its plain simplicity: Whence do cities derive their powers of government? Why, their very organization comes from the State. They obtain their charters from State authority. The theory of our government with reference to them has been in accordance with uniform practice, that they shall be invested with certain limited powers with a view to local convenience and efficiency in government; and these powers may be enlarged or diminished as the State, in its sovereign capacity, shall deem wise and expedient. Now, it is proposed that the State shall abnegate its powers altogether in the essential matters of city governments, and delegate supreme authority to them over all important interests within their jurisdiction. Thus it is recommended that municipal sovereignties shall be reared within the State sovereignty, invested with extraordinary powers, which the State must

not and cannot, in any way interfere with, whatever the emergency may be, or however much the interests of the commonwealth at large shall be imperiled by city misgovernment. The doctrine is utterly opposed to the principles of our political system; it involves a surrender of State authority and sovereignty over a large proportion of its material interests; it invites antagonisms and dangerous strife; it is the proposed centralization of power, so that, in its working, it might soon be said that New York city is the State, the same as it is now remarked of the French capital, that Paris is France. A city has no more claim to independent government than the smallest town in the State. The little town of Lake Pleasant, in Hamilton county, has just as much right to come here and demand an independent government, as has the city of New York or Brooklyn. All are on precisely the same footing as respects organic powers which were derived from the State; and why should State authority be yielded in behalf of the one more than the other? Bear in mind this fact: There is to a large extent identity of interests between city and country. Maladministration, inefficiency, and bad government in our great commercial metropolis, seriously affect the interests of the people of the whole State. I cannot better illustrate the intimate relationship subsisting between city and country than to quote these expressive words from a recent speech in this Convention, delivered by the gentleman from Albany [Mr. A. J. Parker], in his able discussion of the railroad consolidation question. Said the honorable gentleman:

"Now, while we are talking so much about the city of New York, are we to forget the interests of the whole State—the interests of the people? Are we to forget that if you impoverish the country you lessen the resources of the city also? You cannot sever those interests. If the city of New York is the great heart and center of the commercial body, these limbs which spread out in each direction, cannot be severed without sapping its strength, and perhaps taking life. These streams of commerce that run into this central heart like the veins of the system, we must remember, are counterbalanced by corresponding arterial returns of commerce to the country itself. You cannot sever a limb at any point without affecting the vitality of the whole system."

The whole question is here concisely stated. Millions upon millions of our property is held in New York city. Scores of thousands of people from all sections of the State are to-day doing business in New York, either as buyers or sellers, and scores of thousands more visit the city from time to time, and so become temporary residents therein. The produce of the country of all kinds is conveyed to the wharves of the city and transferred to its markets. The State at large has as direct an interest in the proper government of New York city as have the limbs of the body (to use the striking simile of my friend from Albany) in the ebb and flow of the arterial tide from the heart. In other words, the heart must be sound, or the limbs cannot be sustained. These limbs (repeating the quotation) "cannot be severed without sapping its strength, and perhaps taking life." Conceding so much to be true, is there

safety for the State, safety for the material and personal interests of all its citizens in establishing, by constitutional law, the principle of almost complete municipal independence, nullifying the State sovereignty which created the city governments, so that they shall henceforth be cut loose from its controlling authority and be managed by the power of local king caucus?

In this connection, another serious question presses itself upon our attention. We must look it squarely in the face, for it cannot be frowned down nor averted. It is an ever-present and constant danger—a growing and menacing evil in our large cities. We know that the dangerous classes abound in these cities; there they harbor and carry on all their acts of knavery, there they are in full activity, and organized in political association. With caucus machinery perfected to a complete system, and with leaders ambitious for power and intent upon plunder, we know that they constitute an element of fearful evil in the politics of our cities, and especially in the city of New York. Is it wise that the State should give up its power to hold in subjection this vicious element whose supremacy would inaugurate a reign of terror, and whose voting power has already manifested itself in the elevation of corrupt and dangerous men to offices of high trust and responsibility?

The majority of the Committee on Cities propose to ingraft in the Constitution this startling policy: mayors to be elected for three years, and invested with sole power to appoint all heads of departments, and remove them at pleasure, with the exception of the chief financial officer and receiver of taxes and assessments in the cities of New York and Brooklyn. The subordinates of each department to be appointed by the heads thereof. But the latter must be the willing tools of the mayor, to carry out his will, on penalty of removal at his supreme pleasure. Thus we have the one man power proposed to the extent of despotic authority, and that this Convention shall not only nullify the sovereignty of the State over the cities where strict and rigorous government is absolutely essential to the safety of person and property, but shall authorize the caucus power of party to choose a king to rule over them in a three year's reign. The mayor, with nearly all the departments in his hands, and wielding the strong arm of the police to enforce his will, would possess despotic powers, and no State or other agency could be interposed to prevent his abuse of authority. It is true the majority of the committee propose that the Governor may remove the mayor for cause, giving him full opportunity for defense—a privilege that is withheld from the mayor's own appointees; but then the Governor cannot fill the vacancy; the president of the board of aldermen is to succeed him—an official who may be possibly implicated in the very abuses for which the local king is dethroned, thus having the strongest motive to perpetrate his obnoxious reign. I can conceive of nothing more anti-republican than the extraordinary constitutional method here suggested for the government of cities. It would be subversive of State sovereignty, dangerous to true liberty, and an agency of partisanship, proscriptive and tyrannical.

I do not here propose to enter into a discussion of the several commissions authorized by the Legislature from time to time for the management of State and other interests in New York. I may say, however, that the health commission has given as the record of its efficient work in repelling pestilence, not only from the city, but from the State at large; that the Central park commission has presented a memorial of its ability and faithfulness in that great breathing-place for the million, which abounds with the beautiful in art and nature; the fire department commission has restored order and good government where chaos and rowdiness formerly prevailed; and that, above all, the metropolitan police commission has, in these many years of severe trial and popular tumult and danger, afforded protection to life and property beyond any security afforded within the district in the comparatively quiet times before its establishment. The same is true of the workings of the capital police organization of this district; and I believe I utter the almost unanimous opinion of the order-loving and law-abiding people—without respect to party—of Troy and the adjacent villages embraced within the district, when I declare, with all the earnestness of sincere conviction, that its continuance is deemed by them vital to their security. It has given us peace and good order, whereas, before the system was put in operation, and under the municipal plan of police, crime was rampant, and criminals were seldom brought to justice.

The district plan of police is one of its chief merits. It is less expensive, for it requires little more than the same machinery necessary for a single place. All officers possess equal power throughout the district; otherwise, and as the majority of the committee on cities propose, officers would be limited to one place, and going beyond that place into another county, delays would be inevitable in pursuing criminals, and justice often baffled. Another great advantage of the district plan, is this; In case of riotous proceedings, all the force of the district, may be readily concentrated at a single point. Identity of interests render the district plan desirable. The settlements are almost continuous throughout our capital police district, all requiring common protection. Smaller places like Greenbush, West Troy, Green Island, Cohoes and Lansingburgh, could not or would not have police organizations sufficient for protection against raids from larger places, while under the isolated police power they must rely upon themselves, and cannot have help from their neighbors; under the district plan, as at present, all the police may be concentrated from all the places of the district to put down criminal demonstrations in any one locality therein. As to the expense of the system, a fact or two may here be mentioned. Under the old municipal organization, which the majority of the Committee on Cities would revive, as I conceive, in the most obnoxious form, the police expenses of Troy, and upon a specie basis, amounted to about \$50,000 a year; now, with prices enhanced for services of all kinds, some fifty per cent, the cost of the capital police to our city is less than \$80,000. Again, under the old police organization of Troy, West Troy, etc.,

little protection was offered; the people got little except partisan machines for their money, and the losses from thefts, burglaries and incendiariisms, amounted to much more than the entire cost of our present police; now, on the other hand, positive protection is afforded.

In the consideration of this subject, the fact should be recognized that a different system is now necessary for the government of cities than that which prevailed and worked, perhaps for most part satisfactory, many years ago. The number of offices has greatly increased, and larger and multitudinous interests have now to be looked after. In our cities there are two large classes composing our voting population: the industrious and the vicious. By reason of great expenses of living, and the sharp competition existing in business, the industrious are steadily occupied in their vocation, and have little time to attend to political movements; while the idle and the vicious devote a large share of their time to politics; they attend primary meetings, manage caucuses, and pack conventions. So they exercise power and organize corruption in our city governments. And thus the vicious element governs and plunders the tax payers.

Deeming the police organizations under the metropolitan district plan vital to the security of the interests of cities and places where it has been established, and is now in successful operation, the undersigned proposes the following section in addition to others that may be adopted by the Convention, to form an article in the Constitution, reserving his opinion upon the other sections referred to, until brought before us for action:

SEC. —. The present police organizations of the several districts, cities, and incorporated villages of the State, shall continue to exist during the will of the Legislature, and subject at all times to its control by law; and the Governor, by and with the advice and consent of the Senate, shall appoint a superintendent of police, whose headquarters shall be at the capital, and who shall exercise such supervision over these and such other police organizations as may be established by law, as the Legislature shall prescribe. The term of office and the compensation of the superintendent of police, and the number, grades and pay of his subordinates shall be fixed by law.

J. M. FRANCIS.

Which was referred to the Committee of the Whole, and ordered to be printed.

Mr. BOWEN—As a member of the Committee on Cities, I beg leave to occupy the attention of the committee a few moments. I was not here when the report of the majority of the committee was presented, or I perhaps would have made the remarks then that I propose to do now. In regard to that report, many of its provisions meet my entire concurrence; but there are other provisions with which I cannot agree, especially that part which proposes to divorce the cities from all State control. As far as that question is concerned I concur entirely with the report of the gentleman from Rensselaer [Mr. Francis], which has just been read, and it is sufficient for me to say, that I also concur with most of the reasons which are given in favor of the section recommended by

him. But with regard to one of those provisions, I at least have grave doubts whether it is politic to adopt it, and that is the provision recommending a State superintendent of police. It appears to me that the duties which are proposed to be devolved on that superintendent should be devolved on the Governor; yet, so far as that is concerned, I shall reserve my conclusion until the discussion in the Convention or in the Committee of the Whole upon the report. I felt called upon to make these remarks to explain my position in relation to the reports that have been made.

The PRESIDENT presented a communication from the commissioners of the land office, in reply to a resolution of the Convention adopted August 15th.

Which was laid on the table and ordered to be printed.

Mr. ALVORD—I was not present yesterday when the report of the Committee on Cities was submitted, but the Chairman was very right in saying that as far as I was concerned I agreed in the main with the report of the committee. There were some minor details in which I differed from the committee and reserved the right to explain on the floor of the Convention, but with the great question contained in the report, viz: the framework of the report, I agree.

Mr. MORRIS—I offer a resolution.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That the hour of adjournment of this Convention, in its last day's sitting in each week, be twelve o'clock M.

Mr. MORRIS—The object I have in offering this resolution simply is this, that most of the trains which members will take for the purpose of visiting their homes on Sundays leave Albany between the hours of twelve and one, and it is therefore desirable that we should adjourn before we are left without a quorum.

The question was put upon the resolution of Mr. Morris, and it was declared carried.

Mr. BELL—I wish to offer the following resolution, which I will read in my place.

Resolved, That inasmuch as the question of an early enlargement of the locks on the Erie, the Oswego, the Cayuga and Seneca canals depends in a great degree upon the present capacity of existing locks to accommodate the present and prospective business of the country, and inasmuch as the reports and documents submitted to this Convention contain conflicting views and recommendations as to the necessity of such improvements, the canal board is hereby requested to make, or cause to be made, such examinations, and subject the locks upon the Erie canal, or some one or more double locks thereon to such tests as will determine the actual working capacity thereof, and report the result of such investigation to the Convention at the earliest possible day.

I ask the unanimous consent of the Convention that it be considered now.

Mr. CHURCH—I object.

Mr. BELL—I believe I have the floor.

The PRESIDENT—The gentlemen are at liberty to object under the rule. The resolution cannot be considered, except by the unanimous consent of the Convention.

Mr. BELL—Has any gentleman the right, when another person has the floor, to make any motion, or to submit any proposition to the Convention?

The PRESIDENT—The Chair holds, when the question is put on granting unanimous consent, that any gentlemen may object.

Mr. BELL—I will, of course, yield to the decision of the Chair.

Mr. AXTELL—I desire to have taken from the table the resolution offered by me on Tuesday last in regard to the provision for disabled soldiers.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That a select committee of five be appointed for the purpose of considering the expediency of making constitutional provision requiring the Legislature to provide by law for the permanent care of the disabled soldiers of the State.

The question was put on the resolution and it was declared adopted.

Mr. VERPLANCK—I move that the resolution offered day before yesterday by the gentlemen from Wyoming [Mr. Merrill], be now considered.

Resolved, That debate on the reports of the Committees on Finance and Canals be limited to fifteen minutes to each speaker after Monday next, excepting from the operation of this resolution, the chairmen of said committees.

Mr. VERPLANCK—In case this resolution is adopted the session of to-day, which closes at twelve o'clock, and the session of Monday evening, commencing at seven o'clock, will be the only opportunity for unlimited debate in this committee. We commenced this debate on Tuesday at noon, we have had, therefore, part of Tuesday, Wednesday and Thursday for this debate, being two days and a half; and now it is proposed to limit debate to fifteen minutes. The report of the Canal Committee has been called a Buffalo project, and Buffalo, her position, and her interests have been alluded to and criticised on more than one occasion during this debate, and yet no Buffalo man has had an opportunity to get possession of the floor during the debate. It has been called a Western project, and no man from Western New York favorable to the canals, as I understand their interest, except the chairman of the Committee on Canals, has been heard on the subject. The floor this morning is to be occupied by the gentleman from Kings [Mr. Barnard]. After he shall have made his remarks there will be no time for gentlemen interested in this subject to debate this question. We do not wish to occupy the time of the Convention for home purposes, because every man in Buffalo and the West knows that the representatives from Erie county upon this floor are sound upon canal policy. We want to debate it simply for the information of this Convention, and, Mr. President, in my judgment, time should be given to every member who desires to be heard, because the adoption of the Constitution which we shall propose to the people will depend, more upon the action of the Convention upon the subject of canals than upon any other subject which will be embraced within the Constitution. It has been assumed,

that whatever the necessities of the future may be, there is no present necessity for improving or altering the Erie canal. Now, this is a great and fundamental error, and I hope I shall have an opportunity to satisfy the Convention that the Erie canal needs improvement to-day. The question for the committee to consider is the question of cheap transportation and speed. The Erie canal not only needs capacity to carry all the freight that may come, but to carry it cheaply and speedily; and it is a question for to-day and not for a period five or ten years hence. I hope the resolution of the gentleman from Wyoming [Mr. Merrill] will be rejected, and not adopted by this Convention.

Mr. SPENCER—If this resolution is to be adopted, I desire to propose an amendment to that of the gentleman from Erie [Mr. Verplanck]. The portion of the State in which I reside, has not had an opportunity to be heard upon this question. The policy which is recommended by all the reports of these committees, entirely shuts up and dries up the Chemung canal, and that part of the State is desirous of being heard on that question. I therefore move this amendment, in case it shall seem desirable to impose any restriction upon the discussion of the committee.

Add to the end of the resolution, "but the time of any speaker may be extended by the consent of the committee."

Mr. SEYMOUR—I hope the amendment offered by the gentleman from Steuben [Mr. Spencer], will not prevail, and I hope the resolution itself will be voted down. It is of all other subjects the most important subject this Convention has to settle. It is settling the policy of the finances of this State and of the canals of this State for a long period of time, and as there are many gentlemen I know who desire to be heard upon this question, I cannot believe that the Convention will now limit the period of discussion, and limit the time during which any person may be heard. I move to lay the resolution on the table.

Mr. VERPLANCK—Will the gentleman from Rensselaer [Mr. Seymour] withdraw his motion? I wish to make a single remark.

Mr. SEYMOUR—I will.

Mr. VERPLANCK—I made the motion that the resolution of the gentleman from Wyoming should be considered at this time, because it is important to know what the intention of this committee is upon this subject, and not leave it to be determined on Monday evening, when we shall have a small house, and perhaps no quorum. It is important that the friends of the canals should know to-day whether they are to be heard, or whether debate upon this subject is to be suppressed. The reports of the Committee on Finances and on Canals present the most important questions to be considered by the Convention. We have had but two days and a half for debate in committee, and I have heard that a very distinguished gentleman intends this morning to introduce a resolution that the question be taken in committee on Tuesday next, and reported to the Convention. I hope that the gentleman from Rensselaer [Mr. Seymour], will withdraw his motion.

Mr. SEYMOUR—I will withdraw my motion.

Mr. WEED—I hope this resolution will be voted down, and I believe that I can give to this body a reason for it that no gentleman has yet given. We have discussed it briefly, compared with its importance. The subject of finances is contained in the Canal Committee's report, and the report of the Committee on Finances. But there is a subject in the Canal Committee's report included in this resolution that is still more important to my mind than this subject of finances; it is the management of the canals. Every man upon the floor of this Convention has heard it repeated and reiterated, that the present management of the canals is terrible, that it must be reformed, and yet this resolution proposes to confine the discussion upon the management, the change and reformation necessary in the management of the canals, to fifteen minutes upon a side.

Mr. BICKFORD—Will the gentleman allow me to ask him a question? Do you not think it will be better to have a number of short, pithy speeches, a considerable number of them, rather than to have a few long, prosy speeches? [Laughter.]

Mr. WEED—That depends altogether upon how pithy they are.

Mr. LAPHAM—Will the gentleman allow me to make a remark? That portion of the report of the Canal Committee which relates to the care and management is not committed to the Committee of the Whole, in connection with this report.

Mr. WEED—This resolution, as I have said, covers the whole of the report of the Canal Committee and the Finance Committee. The gentleman from Ontario [Mr. Lapham] is mistaken, and that is why I say it should be voted down. There are other very important questions contained in these reports. There is a very important section, to my mind, in the report of the Finance Committee, that has not yet been touched upon at all, and many others; and I say if there is a limit now upon the time of the debate, it should be upon this section, and this subject, and we should not exhaust the whole time of the Convention upon this first question, and leave these others to a fifteen-minute rule, during which time with all due respect to the gentleman from Jefferson [Mr. Bickford], no man upon the floor of this Convention can properly discuss the subject. He may make a highfalutin speech in fifteen minutes upon the question of the management and control of the canals, but he cannot make a speech that will recommend itself to the consideration of this Convention in fifteen minutes, covering the question, for the subject is too broad to allow itself to be compressed within that space of time. I hope, therefore, this resolution, for these reasons, will be voted down.

Mr. BERGEN—I move to amend by making it thirty minutes instead of ten.

Mr. GREELEY—The gentleman from Erie [Mr. Verplanck] who called up this resolution this morning, has probably seen in the *Argus* a quotation from a leading Buffalo journal, that this Convention is the talkiest body that ever assembled. That is the Buffalo report upon this Convention, and I think a just one. Now, are we to

go on debating and debating here when we know that do so is to vote down our Constitution.

Mr. VRRPLANCK—Will the gentleman allow me to ask him a question? Has not the gentleman from Westchester [Mr. Greeley] occupied the floor oftener than any other member of the Convention?

Mr. GREELEY—Very likely; but I have only once spoken twenty minutes; never, but then, more than ten; and seldom over three. All the time I have taken did not amount to so much as was required by the delivery of *one* speech recently concluded. What I say is, the business of this Convention must go on. I hear gentlemen who rise here from day to day and to insist on longer debate, chuckling with each other that our Constitution will be voted down by an overwhelming majority. It is whispered all over the State by those gentlemen, "When you get before the people, your Constitution will be swept away as with a whirlwind;" and every day that the proceedings of the Convention are protracted, renders that result more certain, as they well know. I understand why the gentleman from Clinton [Mr. Weed] insists on having more debate. He says: "Let us carry it over to October, and I do not care what is in your Constitution; it will be voted down." Now, when are we going to finish the business of this Convention?

Mr. WEED—Upon what authority does the gentleman make the assertion he does?

Mr. GREELEY—I say, I see the gentleman from day to day, and I am very sure he means that the Constitution we are making shall be overwhelmingly voted down.

Mr. WEED—May I ask another question? Does the gentleman make that statement simply upon his own judgment?

Mr. GREELEY—Upon my judgment, founded on his acts ever since this Convention met. Now, are we ever to get through with this business? Three months have passed, and not half the articles are even touched yet. Here is a most important one now before us; then comes the judiciary. I ask the Convention to close the debate, in order that we may proceed to consider the article. So long as this debate continues you will get at none of those sections which need to be carefully considered, that need to be scrutinized before they shall be voted on. While you stay in this stage of proceedings you will have long speeches, made for the gratification of the speakers, and no real progress made in the consideration of the article. I ask that the Convention consider the following resolution after they have voted on that now pending:

Resolved, That the Committee of the Whole having under consideration the articles reported by the Committees on Finance and on Canals, respectively, be instructed to report the same, with any amendment they may have made thereto, at noon on Tuesday next.

That is just one week from the time it was taken up.

Resolved, That the Convention do thereupon proceed to consider such reports and all amendments offered thereto, ten minutes being allowed for the advocacy of each amendment and ten minutes for the statement of objections thereto; and

such report and article or articles be the special order from day to day till the same be disposed of.

Mr. LAPHAM—I hope this resolution will be voted down. It is unjust to the magnitude of the subject. It is unjust to the friends who entertain the respective views of these committees, on either side, to be cut off in their discussions at this early stage of our proceedings. We gave three weeks of discussion to the consideration of the single topic of suffrage, and now, upon a question of more magnitude and importance to the people of the State than any other which can come before this Convention, it is proposed after this brief discussion of a single topic to shut down the door entirely. I find I was under a misapprehension in supposing that that portion of the report of the Canal Committee relating to the care and management of the canals was not confided to the Committee of the Whole having in charge the report of the Committee on Finance. The whole subject is here, and the gentleman from Clinton [Mr. Weed] is right in his position, that one of the most important parts of the discussion arising upon those reports still remains untouched. Now, sir, I suggest to the members of this Convention another reason why debate should not be cut off. Member after member of this body has risen in his place during this discussion thus far, and said, "If the canals need improvement I am in favor of it. I am a friend to the canals, and I base my opposition to the theory of the report of the Committee on Canals, upon the belief that there is no necessity for any improvement; and that is said in the face of this most extraordinary fact, that three honorable members of the Convention, a sub-committee on canals, who, on the day we first assembled here, took a solemn oath in the presence of every member of this Convention to discharge his duty as a member according to the best of his ability—three honorable members thus, under the most solemn obligation, have gone and made a practical examination, and certified upon their honors as men, and their oaths as members, that there is this difficulty and deficiency, and yet delegates get up and say, "It is not so; therefore we vote against it." Now, I submit the debate should not be cut off; we are trifling with the great question thus to shut off discussion at this time. Mr. President, I move the previous question.

The question was put on ordering the main question, and it was declared carried.

The question was put on the amendment of Mr. Bergen, and it was declared lost.

The question was then put on the amendment of Mr. Epencer, and it was declared lost.

The question was then put on the resolution of Mr. Merrill, and it was declared lost.

Mr. VERPLANCK—I rise to a privileged question. The gentleman from Westchester [Mr. Greeley], who has been scolding this Convention and consuming time since the day the Convention first met—

The PRESIDENT—The Chair will inform the gentleman [Mr. Verplanck], that is not a privileged question.

Mr. VERPLANCK—The question of privilege I have not come to. The gentleman from West-

chester asserted upon the floor upon the first day the Convention met that the democratic party—

The PRESIDENT—The Chair must inform the gentleman [Mr. Verplanck] that he is out of order.

Mr. VERPLANCK—May I proceed in order.

The PRESIDENT—The gentleman may proceed in order.

Mr. VERPLANCK—I rise to a personal question.

The PRESIDENT—The gentleman will state it.

Mr. VERPLANCK—It is this. The gentleman from Westchester [Mr. Greeley] states that the democratic party and the gentlemen interested in this movement this morning—

The PRESIDENT—The Chair must inform the gentleman [Mr. Verplanck] that neither the gentleman from Westchester [Mr. Greeley] nor the democratic party are in order. [Laughter.]

Mr. VERPLANCK—I am here sworn as a member of this Convention to do my duty.

The PRESIDENT—The Chair will inform the gentleman there is not any question pending before the Convention.

Mr. VERPLANCK—Have not I a right to speak to a question personal to myself.

The PRESIDENT—The gentleman has a right to state his question of privilege.

Mr. VERPLANCK—The gentleman from Westchester [Mr. Greeley] charges me and other members of this Convention with the intention of presenting to the people of this State a Constitution which shall be voted down by the people. Now I wish to disclaim any such intention, and to assure that gentleman and this Convention, that under the solemnity of the oath I took on the first day of the Convention, it shall be my most earnest endeavor to submit a Constitution so perfect that it will be my pride and pleasure to support it, and to say that I would be very sorry indeed that the time spent by the Convention and the money it will cost should be lost by submitting a Constitution, which will not be approved by the people. I earnestly hope that the Constitution which shall be framed by this Convention, will be adopted by the people.

Mr. GREELEY—I now offer my resolution. I was exceedingly desirous, if I had not been cut off by the previous question, to ask the honorable chairman of the Committee on Canals when, according to his idea of the manner in which this debate ought to be conducted, we shall have concluded our labors and submitted our Constitution to the consideration of the people? That is a very important consideration. Talk takes up the time of the Convention. This gentleman and that gentleman desire time to bring their views before the Convention. But the most vital matter of all is that the people shall have time to consider the work of this Convention and to judge whether the result is, upon the whole, worthy of their support. There is not, as has been stated here, a democratic journal in this State, from beginning to end, that does not expect and desire, and that does not act and speak as expecting and desiring, to have our Constitution voted down—not one—from one end of the State to the other.

The PRESIDENT—The Chair must call the gentleman from Westchester [Mr. Greeley] to order. He must speak to his resolution.

Mr. GREELEY—My idea is that this debate must be so concluded that we may vote upon the articles before us section by section. Let amendments be offered and let us consider them. So long as we remain in Committee of the Whole we get nowhere, but are simply debating, debating in one, two, three, five-hour speeches how the affairs of the canals are or ought to be managed. I believe nine-tenths of the members of the Convention are ready to vote upon the propositions before us. I am sure they will be by Tuesday noon, when one week will have been given to general debate on the question. I will now ask that my resolution do lie over until Monday evening.

The resolution accordingly lies over.

The Convention then resolved itself into Committee of the Whole upon the reports of the Committees on the Finances of the State and on Canals, Mr. SMITH, of Fulton, in the chair.

The CHAIRMAN announced the pending question to be on the amendment of Mr. Verplanck.

Mr. BARNARD—As has been said more than once this morning, the question now before this committee is the most important question connected with our Constitution that will be submitted to the people. Before I proceed to consider that part of the question to which I have given some attention, I beg leave to refer to my early recollections as to the history of this canal, and to some events immediately connected with it, which are identical with the recollections of the chairman of the Canal Committee. He spoke of his early recollections of the visit of Lafayette to this country, immediately preceding the great canal celebration, and my earliest recollection reaches the same events. I recollect, at that time, with my fellow-playmates of my native city of Hudson, going out into the adjoining mountains and woods and gathering the green to decorate the arches that were thrown across the streets of that city to receive the nation's distinguished guest. I recollect that the people, one and all, turned out on that joyous occasion. We all wore badges upon our breasts, which read, according to my recollection—

"The fathers in glory shall sleep
That gathered with thee to the fight,
But the sons shall eternally keep
The tablet of gratitude bright.
We bow not the neck; we bend not the knee;
But our hearts, Lafayette, we surrender to thee!"

Immediately succeeding that event it was my fortune to be in the city of New York, on the occasion of the great canal celebration. There were no telegraphs in those days; but it was announced to the people that there would be placed within hearing distance from Buffalo to the city of New York cannons which should be heard by the whole people of the State, that when the immortal Clinton first entered from Lake Erie upon that canal, the notice should be given by the booming of cannon, and then spread from point to point until the noise should be taken up by a grand salute in the city of New York. I recollect being on board of the steamboat that went down to Sandy Hook, in company with the small canal-boat that bore the distinguished officers of the canal; and I saw

there the illustrious Clinton, pouring from a vessel, the waters he had taken from Lake Erie, and mingling them with the waters of the Atlantic ocean, thereby typifying the union between the lakes of the west and the Atlantic ocean, created by that great event. And I have thought, since the remarks of the honorable gentleman, the chairman of the Canal Committee, something about the history of the gigantic strides which the State of New York has taken since that time. I recollect that the geography which I learned, stated then that the chief towns of the State of New York were New York, Albany, Hudson, Troy, Poughkeepsie, Schenectady, Newburgh, Athens, Geneva, Canandaigua, Lansingburgh and Utica. The city of Brooklyn, now the second city in the State, and the third city in the Union, was not named among the chief towns of New York then. The cities of Buffalo, Rochester, Oswego, Elmira, and Syracuse, were equally unknown. And I regard it now as significant, and I mean to allude to it in the course of my remarks, in regard to the city of Syracuse, that it is now the center of the great county of Onondaga, and that it is the center of that great wealth which enables that county to lend its money freely to the adjoining counties that may apply for it; and it may be that I shall be able to trace some of the sources of that great wealth in consequence of the principal contractors upon the canal residing within that city, and also a well known ex-Lieutenant Governor of the State. Before I proceed to the main question that I intend to consider, I may refer a little to my notions about the public debt. It will be my desire, it will be my hope, that in every way that is within the power of our people, without any great amount of distress or suffering, we should bend all our energies to liquidate our State debt, and contribute our full share toward the liquidation of the national debt. I cannot take the same view of the question that was taken by the honorable gentleman from Onondaga, a member of the Canal Committee [Mr. Alvord] if I understood him, when he spoke of the blessings of the national debt in regard to the people of the State of New York. I know with what crushing effect he pointed to the chairman of the Finance Committee, [Mr. Church] and said, "out of thine own mouth will I condemn thee," when he said that although our share of the national debt was not probably more than \$700,000,000, the nation owed of that debt to the people of the State of New York \$100,000,000; and, therefore, we were very happily off. I cannot see it in that point of view. In order to illustrate it, I will suppose that that whole \$1,000,000,000 belongs to a single individual, and he a citizen of the State of New York. He will call upon the people of this State to contribute their share for the payment of the interest and principal of that debt. He will see them toil, and sweat, to pay their share of the interest. He will see them deny themselves many of the comforts and necessities of life, in order to bear their share of the national burden; and he will receive that interest, and he will receive his share, in due time, of the principal, and he will walk among the people and know that as the law now stands, although the owner of a thousand millions of the

national debt, he is not bound to contribute one single cent toward the taxes to relieve the burdens of the people of the State of New York. If that is a national blessing, God prevent me from seeing anything of the kind. I know that the persons holding the bonds may feel that holding a million of bonds may be a blessing to them; but it is by no means a blessing to the people. Now, in regard to these canals. I am not going to consider this question as though I were addressing a company of merchants, or of forwarders, or of traders. I must consider this question in reference to the government of the State of New York, and to the true functions of that government, which I understand to be to provide for the protection of the people in their rights and liberties, so that they can engage in the pursuit of happiness without invasion of force, robbery, theft, or fraud. When the government does this, it does all that can be expected of it. When it leaves the people to the free enjoyment of their rights, leaves them free to engage in matters of business or commerce, without the interference of government, it does its whole duty. In connection with that, it has always been held, at least from the time of the Roman government, when it extended itself over the most of Europe and into England, that the means of communication from one part of the State to the other, must be provided by the State. The Roman government built those great roads extending from the city of Rome to the ocean, passing into Great Britain, extending to every part of the country then under its dominion. And after the Roman power ceased, its magnificent roads continued, and were worn, generation after generation, by the people, until, at the time of the commencement of the reign of George III, the roads of that country had been worn out, and had become almost impassable; so that to take even a short journey was dangerous to life and limb. It has been deemed one of the evidences of the great decay of civilization, that the means of communication between one part of the country and the other, were almost, at that time, totally destroyed. And it is one of the crowning glories of the reign of George III, that before his decease, this state of things had changed. Roads had been built again in every part of the kingdom; canals had been made, and thus free communication between one part of the kingdom and the other, had been secured. Such are held to be the functions of government. But when we have done this we have done our whole duty. The commerce between this State and other States must be left to the enterprise of the people. The canals of this State fulfill their mission, as means of communication for our own people; and in this point of view I hold that it has been a wise policy of this State. It was in performance of this duty to the people that it not only made the great canals, which have turned out to be so profitable, and to yield a revenue to the State over and above all the expenses of management and repairs; but that it created these smaller lateral canals which tend to promote the intercourse between the people of one portion of the State and another. I should be the last one, looking at the true functions of the government, to say that those functions would be

discharged by the abandonment of any of the lines which we have thus provided, preventing the people of the State of New York to go from one part of the State to another by means of these canals. When the gentleman from Onondaga, belonging to the canal committee [Mr. Alvord] made his remarks, and when he spoke in such glowing terms about the importance of this State securing, if possible, a monopoly in regard to the carrying trade of all the country, and all the world, I thought that they would be very appropriate if they were to be delivered on any of the exchanges in the city of New York, or any of the great exchanges of our State, urging our people, as a matter of private enterprise, and as a matter of personal ambition, to engage in any scheme calculated to promote the commerce between this State and the other States of the Union. But when he speaks of the duty of the government to interfere in this matter, then I recollect what took place in the years gone by. When the State of New York was engaging in the construction of the great Erie canal, there were members of Congress who were urging the national government also to engage in great works of internal improvement. The only means then known were—not the construction of railroads, for they were unknown; not the construction of canals, because the Alleghenies prevented success in that direction—but the construction of magnificent public roads, proceeding from the Atlantic, across the mountains, along the plains, across the Mississippi, and intended to reach to the utmost western verge of civilization. I know that, year after year, appropriations—first few and small and afterward many and great—began to be passed, until the President was compelled to step forward and by the interposition of a veto prevent this tendency to extravagant expense, this source, as I hold it, of corruption; leaving the matter, after the nation had provided the great roads, to a certain extent, to the action of individual States, and to the action of the people. Some of the arguments that were made with reference to those vetoes and those appropriations in Congress were as eloquent, and were as full of poetry and imagination as anything that fell from the lips of the honorable gentleman from Onondaga [Mr. Alvord] in this discussion. But those days have all passed away. The system that was intended to be made a permanent system of the country, has all gone amongst the things that are past. Now, we have been warned of our duty as a government, against the rivalry of railroads with canals, against the danger of combinations among the railroads, and that unless the State of New York shall be up and doing, letting our great debt remain and passing on to appropriation after appropriation, and possibly increasing our debt, there is danger that some other State will become the victor in this contest for the great prize of the commerce between the States. I have no such fear. I care not about the great commerce between the different States. I look more to the happiness and welfare of our own people; and if they have all the necessities and comforts of life; if they have all the means of communication between one part of the State and

the other; if they have a good government, and shall be free from taxes, and free from a great debt, that is all that I desire as a citizen of the State of New York. I think there is as much danger, as has been stated here, of combination among forwarders to raise the rate of freight, and to raise the charges on transportation, as there is of combination by the great railroads of the country to prevent commerce from coming into the State of New York. In reference to the great city of New York, the great commercial center of the Union, we have heard prophecies made here upon this floor, that unless we engage in this project of the Canal Committee, we might see, as the gentleman from Ulster [Mr. Schoonmaker] said, the grass grow in the streets of the city of New York. I have heard about that grass growing for some thirty or forty years. Every attempt made for any great enterprise, has been urged upon our people, for fear the grass should grow in our streets. At the time when the State of New York was rising in its might to put forth all its energies to put down the great rebellion of 1861, it was said by the advocates of that rebellion—the city of New York will be deprived of its great commerce in cotton, and before three years roll round, the grass will be growing in your streets. We were deprived of that great commerce in cotton; but the grass has not been seen there yet. There has been no evidence of decrease in its material prosperity, no evidence of decrease in its business or trade, and no other evidence of its decrease in any respect except in that false and fraudulent census of 1865, devised by our former Secretary of State, Depew. Within the last forty years, we have seen Philadelphia struggling, by means of canal and railroad, to get the monopoly of the trade between the West and the Atlantic. We have seen Baltimore, with its Chesapeake and Ohio canal, and with its Baltimore and Ohio railroad, making the same effort. And we are told now that Norfolk is about to put forth its energies to strive after the same prize. The great canal of Pennsylvania has been constructed, has been used, and has been abandoned by the State, and sold with the concurrence of its people. The great railroads that center in the city of Philadelphia have contributed to its increase, and by the increase of the city of Philadelphia they have called upon the city of New York for more of its commercial products, and the city of New York has been benefited by it. The Baltimore and Ohio Railroad has been completed, and the Chesapeake and Ohio canal is in use. Baltimore has thereby increased in population; but as it has increased in population it has been obliged to call upon the city of New York for additional quantities of its products brought to its port from every part of the world; and thus the city of New York has been benefited by the increase of that city. And when Norfolk shall succeed in its great enterprise, and when the means of communication between the Ohio river and Norfolk shall be complete, and that city shall begin to grow, they will put forth their hand imploringly and ask of the merchant princes of New York to send them the products we are collecting from all parts of the world. And thus our great

commercial city increases by the increase of its sister cities, and it feels no rivalry, no jealousy at the progress of any of them. As I have said before, I shall hold that it is the duty of the people of the State to free themselves from all public debt of all kinds before embarking in any other unnecessary scheme of public expense, and that no more money should be expended on our public works until we shall adopt and put in successful execution a system that shall secure more efficiency and honesty in their management. All efforts for improvement thus far have proved failures, and let us tax our wisdom to remedy those defects before we embark in any further expense. The gentleman from Onondaga, the honorable member of the Canal Committee [Mr. Alvord], has referred to the efforts on the part of the Legislature to afford some remedy for the inefficiency in the management of our canals. They have passed law after law. They have created officer after officer. They have filled your capital with hordes of persons feeding from the revenues of your canals; and yet they all confess that the canals are worse managed than they ever were before; and I do not see that they have yet offered any remedy that will afford us any guaranty that there will be more efficiency in the future. Let us see what system we have now. It has not always been the system of this State. It is a system that was created upon the ruins of the old system, and was supposed to be one that would be beneficial in its tendency. The system of letting out the repairs of the canals by contract, and requiring the contractors to furnish keepers of locks, is one that has been adopted within the last few years, and it has proved a failure. We have on our tables a report running through some nine hundred and odd pages, in one book, and eighty or ninety in another, of testimony taken before a committee of the Senate of this State in regard to the management and the frauds upon our canals—a most opportune report for the deliberation of this Convention. It enables us to see, without reference to any loose rumors, or any flying statements of individuals or papers, upon the sworn testimony of witnesses summoned and forced to attend before this committee, what mismanagement and what frauds the people are now suffering under. In regard to the management of the canals but little testimony was taken by that committee, except in reference to the Champlain canal. In reference to that there has been most abundant testimony; and I shall take the liberty of snatching from the testimony of a few of the witnesses some of their remarks, showing the opinion of the people along the line of the canals, as to the amount of mismanagement under the present system of our canals:

Orson Richards, a lumberman at Sandy Hill, having two water-mills on the Hudson river and two steam-mills located upon the canal, and employing over five hundred men, as late as the 27th of June last, had over over 500,000 pieces ready for market, all of which might have been forwarded but for the interruption of the navigation of the canal. That interruption caused him damages to the amount of \$25,000. In addition to that, his boatmen, who have a half interest in each of his

twelve boats, share in the losses caused by delay. He says that public opinion in his vicinity, without reference to politics, is that the canals are badly managed.

W. McEchron, a lumberman at Glens Falls, had, on May 6, when the canal was advertised to be opened, 200,000 pieces. He employs about one thousand men. His damages by the delay were estimated at \$10,000. He complains that the lock-tenders go to bed at night and will not lock boats after dark. At one of the locks, he says, (page 536):

"There was a man drowned here, as I understand, and the grocery-keeper and lock-tender saw a ghost there, and that frightened the people there, and they could not get any one to tend the locks at nights."

I will state in reference to these lock-tenders—because I wish to say all I can in favor of the residents in the vicinity of that canal—that they are not generally residents of that vicinity, but were brought there from the West by the western contractors, probably from Syracuse, in order to do the State's duty there.

James C. Clark, of Glens Falls, a manufacturer of lime, employing from 30 to 50 hands, had ready for transportation on the 6th of May about 4,000 barrels, and making from 500 to 700 barrels a month, had to stop work on account of the detention in the canal, and put out all his kilns and dismiss his men. The lime interest at that place had on hand May 6th 30,000 barrels, worth from \$40,000 to \$50,000, and employing 22 boats and paying State tolls on the canal about \$20 per 1,000 barrels. He says it is the universal sentiment that the canals are mismanaged.

James R. Gandle, of Fort Edward, speaks of the bad condition of the canal—that the horses have to be pulled out of the mud; the ends of the dock sticks stick up so that the lines of the team catch and break from five to ten times on one trip. The complaint is general about the management of the canal from neglect of duty. He does not believe that one-third of the State appropriation of \$600,000 for the canal, irrespective of the ordinary repairs of the canal, has actually and in good faith been expended upon those works.

Hiram C. Wilcox, of Glens Falls, a manufacturer of lime, and in the transportation business running 23 boats, having 22 limekilns, making 2,200 barrels a day, employing 300 men, had to cease work. He lost \$25,000 upon the spring trade by reason of delays on the canal, and had 300 men, having families dependent upon their daily labor for support, thrown out of employ and out of the means of support by the same bad management.

Nicholas Graham, of Fort Edward, a boat owner of 37 years' experience on the canal, came from New York on the 10th of May, was kept in the river four days by reason of the crowd of boats—300 boats were kept there idle. No lock-tenders had been employed there. The damage to each boat and crew was \$20 a day for expenses, besides the loss of the earnings of the boats and damage in not filling contracts.

K. P. Cool, of Glens Falls, a forwarder running 23 boats and having 21 limekilns,

says in reference to the management of the canal: "I think there is very general dissatisfaction, and has been for years. Efforts have been made by our commercial men to have change produced, but have always failed to get it. Nothing has been more apparent than the necessity for that change. We almost despair of succeeding in doing business. Every year it grows worse. This year is the worst we have ever had."

* * * Under the present system I felt the effect the very first year the contract system went into operation. We had just started, and I supposed it would be all right; but before the year was out we were satisfied the system was wrong, and we have felt it more and more ever since. Every year it has been growing worse, and there has been more and more dissatisfaction growing out of the manner of carrying it on; and it is growing worse, and I don't know that we shall have any canal next year."

Edward Coleman, of Fort Ann, testified as to detentions on the canal by reason of breaks, owing to the negligence of Daniel Denio, a man who had charge of the wickets and the waste weir, whom he found asleep. This Denio was proved to be a very intemperate man, reeling about the streets and roads in the vicinity; and I can imagine with what grim sarcasm the chairman of that senatorial committee put the question, to one of the witnesses "What is the standing of this reeling Daniel Denio?" Ezekiel Smith also testifies to bad management. Oliver Bascom, a forwarder of Whitehall, of forty years' residence, belonging to a company having thirty or thirty-five boats, gives this testimony:

"Q. Will you describe, in your own way, the management of the canal and its repairs, when controlled by the State directly, through its officers, compared with its management under the control of contractors? A. It seems to me that the work was done in a better manner, more efficiently done, more prudently done, done with more judgment, with a view to durability, very much more than it has been done since the contract system."

"Q. State the comparative effects of the two systems on the business operations of the canal. A. Since they enlarged the locks, they commenced building a new class of boats. Up to within six or eight years the boats were all eighty tons burden, drawing four feet of water for eighty net tons; and they would make about thirty trips in the season; line boats, running night and day, carrying 2,400 tons. Since the large boats, the contract system has been in vogue; and the boats will carry about one hundred tons and make about twenty trips in the season, making 2,000 tons against 2,400 in the old way before the contract system went into operation. That is owing, in part, in my judgement to the contracting—letting the repairs to a contractor; and also in part to—

"Q. State how? A. There have been various delays; breaks have been very frequent, and delays more frequent; bars made in the canal by streams running in, more frequently; that is the principal cause of the delay; another cause of delay, in a slight measure, is the want of breadth of bottom to accommodate the increased width of

boat; but a great part of the delay is caused by breaks and bars forming; making an excavation. they put it on the bank without any judgment at all, and the result is, that it tends to form bars; the excavations made for the last two years in making more breadth of bottom, although it has been thrown on either bank, without reference to whether it would stay or not, nine times out of ten it is all in the canal again within the season; going over the canal for twenty or thirty years, and conversant with it, there seemed to me to be a want of care and ordinary judgment.

"Q. As to these breaks that you speak of, as to their frequency, are there more under the contractors than when the canal was under the charge of the State? A. They have been much more frequent latterly, for the last six or eight years, than formerly.

"Q. How do you explain that? A. Perhaps it is owing to the larger body of water, but I imagine most of it is in consequence of neglect. A heavy shower comes up and the levels fill up rapidly; and unless the water is drawn off it soon runs over the bank, and as the banks contain a good deal of sand, in a short time there is a serious breach made in the bank. There does not seem to be that attention paid to the bank that there was under the State superintendent.

"Q. Would adequate care and watchfulness prevent the breaks? A. Three-quarters of them, I have no doubt it would.

"Q. Is the high water you speak of, running over the bank, produced by allowing mud to fill up the bottom of the canal, and then raising the water to a sufficient depth for the boats? A. No, sir; it is caused by rains. You cannot avoid filling up occasionally with a heavy shower. The only way is to open the waste weirs and gates and let off the water.

"Q. Would adequate watchfulness do that? A. Certainly. Any ordinary prudent business man, if he had the canal, would have his men stationed so as to be on hand to open the waste gates.

"Q. Are these breaks repaired with sufficient expedition? A. I cannot tell you latterly, because I have not been upon the line of the canal much for two or three years; my opinion is that they are not; but this is not from any personal knowledge for the last two or three years; when the breaks occurred they used to be repaired very soon afterward.

"Q. By the contract, the contractors are required to furnish the necessary lock-tenders. A. Yes, sir.

"Q. Will you give the committee your judgment as to the way that duty has been performed by the contractors? A. So far as my knowledge of the lock-tenders goes, they are a set of inefficient men generally; they are not that sort of men that business men would hire to take charge of any work for them; they are inefficient, and nine times out of ten are intemperate men, men that could not get a living at any legitimate business in any kind of trade or labor.

"Q. Is the business of tending locks one requiring efficient, honest, faithful men? A. Yes, sir; very eminently so; as oftentimes the judgment of the lock-tenders is important, in this place par-

ticularly; there are often delays caused by want of judgment, from the mere want of firmness; the boatmen are ugly oftentimes, and it wants a man of judgment and firmness that understands his business to lay down the rules and make them abide by them; but they are a class of men that fifty cents or a dollar given to them by this man, that or the other, will influence them to decide some other way than what would be right; and as a consequence there are delays occurring, and all that sort of thing, which ought not to be.

"Q. As a class of men, without speaking of individual cases, do you consider them reliable and honest? A. No, sir, I do not; they are a class of men that live by pilfering from the boats; that I do not speak of as a general thing, although, as is well known, they pilfer coal and various kinds of coarse cargo, all of them; I mean as a general thing.

"Q. They are men who will accept a bribe for advancement in the locks, and will give a man a position in advance? A. A good many of them will.

"Q. As a class? A. As a class.

"Q. As regard their habits of temperance or intemperance, what can you say of them? A. They are generally intemperate.

"Q. As to their frequenting tippling houses? A. They always have a little grocery at the lock, and the chances are that they are intemperate.

"Q. Is it the duty of the lock-tenders to watch the level so as to draw off the water when it is necessary? A. It is here; I do not know about that under the contract system.

"Q. Have you ever known or been informed in any way of a break being caused in order to produce a profit to the grocery adjacent to the break? A. I have been informed of such cases; I believe such things have been done; it has been followed up so closely as to find the marks of the spade cut through a sand bank to get a water-course to make a break.

"Q. Under the system of the State managing the canal directly through its officers, did the forwarding interest have a good canal? A. Yes, sir; we had a better canal than we have had since.

"Q. Under the system of the contractors managing the canal, have you ceased to have a good canal? A. It is not as good as it used to be; no, it is not a good canal.

"Q. State whether it has been growing better or worse under the contractors? A. My judgment is that it has been growing worse.

"By Mr. Stanford:

"Q. Even with these large appropriations? A. Yes, sir; the difficulty is that there is a collision of interest between the forwarder and the contractor, and the whole thing from beginning to end is unnatural, and you cannot make anything out of it at all; they have a certain amount of work to do, and they undertake to get it done for a very low sum; and it does not stop there, for the superintendent is spending as much as the contractor, and when they get a break it is a very large one, of course."

In reference to these breaks I have to state that it is a peculiarity in the contracts for the repairs of these canals, that if by reason of floods

or any other cause, there should be a break, the contractors are bound to repair that break, provided the expense does not exceed a certain sum; and on this canal, at this time, it is provided the expense does not exceed the sum of \$5,000. Hence it is made the interest of the contractor that every break that shall occur in these canals shall be a big break, so that the expense of restoring it shall not cost less than \$5,000. The committee then put this question:

"Q. Is it for the interest of the superintendent to have a large break? A. I suppose it is, if they get a large break; if it is \$5,000, then it is better to have it \$10,000 or \$15,000, because the excess over \$5,000 will make a very large profit; if they have a break and make it \$15,000, they make \$5,000 profit out of the \$10,000 in excess of the contract?"

Such are some of the beauties of this economical and prudent canal system.

"Q. The structures upon the canal are to be kept in repair by the contractor. Do you know whether that is performed promptly? A. Not much.

"Q. Do you know whether they have the materials on hand promptly to repair anything that breaks away? A. I know so far as lock-gates are concerned, we are often told that there is a lock-gate broken. In the olden time they used to have duplicates, kept on hand, perfectly seasoned, and ready to put in. Now we are told that a lock-gate is broken and they have got to go to some point and get oak timber, green at that, and get it on the spot, and frame it, and put it together, taking two or three days when they ought not to delay over twelve hours.

"Q. Is that occasional? A. That has been the case a good many times.

"Q. Creating unnecessary delay? A. Yes, sir. In the old way, they had duplicates in convenient places, and two or three mechanics can put a gate together in twelve hours and put it in.

"By Mr. Gibson:

"Q. Do you know of any fraud or improper or irregular conduct by any officer of the State connected with the management of canals? A. Not personally; there is a squandering of the money of the State; and this \$500,000 that has been appropriated has not added anything to the carrying capacity of the canal; indeed we do not carry as much.

"Q. The extra appropriations have been squandered? A. In a great measure; on the locks and permanent structures there may be an improvement.

"Q. You consider it substantially a failure? A. Yes, sir, substantially a failure; there are some structures and new locks made permanent, and undoubtedly good, so far as I know.

"Q. Independently of the locks built, you regard it as a substantial failure? A. Yes, sir; it don't draw more water than it did five years ago, and certainly cannot transport as much in a season as eight years ago, when the boats carried eighty tons, while now they carry one hundred; the books of the line will show that they used to make thirty trips—twenty-eight to thirty-one—at an average of eighty net tons, and now twenty

trips in a season is a large number; making an advantage of four hundred tons in a season in favor of the small boats in the canal as it was.

"Q. That you attribute to the condition of the canal. A. Yes, sir; I don't know anything else to attribute it to. These delays, in consequence of breaks, the lock-gates breaking, sand bars forming, drawing off the water to take out the sand bars, and low water in the canal. It is evidently for the interest of the contractor to keep the water down. There is less liability of small breaks; and when boats are drawing three feet nine, and there are only about three feet eight in the canal, there is a great delay, and a crowd and a jam down the river. I had two years ago an interest in about one hundred teams, and it cost \$500 a day to feed them. In August the river was low and the water was running through the dam, what there was of it. The water in the canal was down, and the sixteen-mile level was full of boats laying day after day; when all it wanted was to gravel and fix that dam. The superintendents were determined to have a new dam there, and would not fix it. I told them if they did not go to work, I should, and gravel that dam. They went to work and graveled the dam; the whole thing has been a good thing to pick at; if it is not improper, I will say that my notion is that the only way is to have a commissioner, who shall have charge of this canal; as for the present commissioner, I think he has done as well as a commissioner could under these circumstances; prompt, ready and active; but his time is taken up with the Erie canal mostly; he comes up in the eleven o'clock train, and says, "Boys, how is it—everything all right?" and goes and gets his dinner, and is off in the afternoon train, and we never see him; that is the general way they have done the thing; I don't know anything about the lock-tenders; they are put on there by the contractor, and their pay is so much; sometimes, when there has been a big crowd at the locks, we have proposed to run the locks, and put on such men as we could, and we would pay them; and we have done that for several weeks; the two lines would join together and pay it, and put on a different class of men from those the contractor put there; the result would be that they got fifteen or twenty more boats through in twenty-four hours than before; it was a great saving, and the lines could afford to pay it.

"By Mr. Stanford:

"Q. The State of course received more tolls? A. Yes, sir; and it is not only a loss to the State now, but it will take five years to get back again the carrying trade and place us where we were last year; we carried through cheaper by the canal, and not only cheaper but in a better condition from New York right through the lake; but we have lost the carrying trade this spring; and not only this spring but next fall, and the spring following; for it will take a long time to get back the customers we have lost by these delays; it is ruinous to the forwarding interest; the line with which I am connected have run up \$30,000 where they have not earned a dollar of expense; and they have got 50 or 60 boats on hand costing \$800 a day, and 120 teams at \$400 or \$500 a day. The whole thing, so far as ex-

penso is concerned, going on, and not a dollar earned. It is ruinous, and a loss to the State.

"Q. Did you have such a state of things before the contractors went to work? A. Not so much. Sometimes a day or two under the superintendent occasionally.

"Q. Nothing that has approached the destruction of your interests? A. No, sir; in a long series of years once in a while there would be an inefficient superintendent, or an inefficient man here or there, but the thing was remedied when brought to the notice of the commissioner.

"By Mr. Gibson:

"Q. When the first appropriation of \$150,000 was made, four years ago or thereabouts, for the benefit of the canal, did the forwarders upon the Champlain canal invite the canal officers to go through the Champlain canal and inspect it? A. Yes, sir.

"Q. Did they do so? A. Yes, sir; several of the canal board were along; I don't know whether the engineer was along or not. I don't think the State Engineer was along.

"Q. Did the forwarders furnish to the canal board a statement of what they desired? A. Yes, sir; verbally, as we best could.

Q. What was the result of that conference? A. Mr. Skinner admitted that it should be done; but he said it had got to go through the system of letting. The engineers had all to go on and make their surveys and make their reports, and they had got to go through the usual routine of getting at the thing. We told them what our needs would be, and the whole thing.

"Q. What was the result of that appropriation? A. The result was that this point was cut off, and that point was cut off, and a tree dam authorized, and other things that would not benefit us; well, they were a benefit in their way, but there was no general benefit.

"By Mr. Davis, the next witness:

"Q. They spent most of the money in building the lock? Yes, sir; and we understand that the appropriation was for the general benefit of the canal; the way the thing was managed was this; the contractors looked along to see where they could get a good job."

Elisha A. Martin, of Whitehall, a resident for sixty years, in the forwarding business, prepared a statement of the damages to the forwarders and business public, arising from the detentions upon the Champlain canal in the present season. I have that statement here. It will be found upon page 368 of the report, and I will read it:

Memorandum for Canal Committee, June 24, 1867.

Date of first clearance at Whitehall.	Whole No. June 24.
1860, April 27,	1,210
1861, May 1,	720
1862, " 9,	823
1863, " 7,	818
1864, " 1,	1,305
1865, " 1,	877
1866, " 8,	912
	<hr/> 6,665

Average up to June 24, for seven years,	952
1867, May 15, June 24,	589

Clearances from Whitehall up to June 24,

Less than the average for the previous seven

years. And this is caused entirely by breaks and detentions in navigation, as in consequence of previous notices, forwarders and boatmen were ready to commence work and were kept on expenses from May 6—many from May 1.

Tolls on these 364 cargoes, average 20,	\$7,280
Tolls on return cargoes and short shipments from Fort Edward and Glens Falls,	7,280
Loss to State in tolls,	<hr/> \$14,560
Value of 364 cargoes detained from market, at \$1,800,	\$655,200
Value of same amount for return cargoes and shipments, which should have been from Fort Edward, Sandy Hill and Glens Falls,	655,200
Business loss and derangement,	<hr/> \$1,310,400
Freight of 364 cargoes, average \$225,	\$81,900
Freight of return cargoes and way shipments,	81,900
	<hr/> \$163,800

I will read further from the testimony of the same witness:

"By Mr. Gibson:

"Q. In the loss which you have estimated in this paper have you included the item of a permanent loss of business, from a delay of four, five or six weeks at the commencement of the season? Or is that made up in any short time? A. It is a matter simply of estimate; and there is a view in which it is beyond estimation; because these delays may involve the destruction of half the business men of the North. Acceptances upon property, drafts made upon it, and the failure of the property to arrive in the market to meet these acceptances may upset half the business men in the North, and make it necessary for them to go through bankruptcy, and involve failures. That view of the case cannot be met by estimates. My estimate was simply to cover the direct losses from this delay. But the forwarder loses his hold upon his customers in the future, and the customers of the route become disgusted with it, and say they will seek other ways of reaching the market, by railroad, or by sea, or any other way they can.

"Q. Is that a permanent injury to the revenues of the State, as well as to the business of the forwarder? A. Undoubtedly. There have been, within the week, parties from the furnaces at Troy and Albany, seeking to make a permanent arrangement by which their ore and iron could go forward by rail. That is one of the results. We have paid to the railroad company, for sufficient transportation to keep the furnaces running \$6,000 for one company. We paid the railroad company some \$6,000 for freight on their coal. This is one case of a great many of the same character. Our business is more particularly confined to that branch, and I speak of that. Other business suffers in different ways. The Canada trade, I understand, is seeking the market by sea, by another route. The merchandise from which the canal derived its tolls, fifteen or twenty years ago—the valuable merchandise—now avoids it altogether.

"By Mr. Gibson:

"Q. Is not that a class of freight that pays high rates of toll? A. Oh, yes; but examine the

returns of the canal department, and you will find the tolls upon merchandise steadily decreasing.

"Q. If this canal were in good order"—

I call your attention to this. It is not, "If this canal were widened," not "If your locks were doubled," not "If the locks were 200 feet long," but—

"Q. If this canal were in good order, merchandise would reach Rouse's Point almost as quick as by rail? A. I know we have had that tested sometimes, in trials ten or fifteen years ago, and we beat the railroad then."

I next refer to the testimony of Herman R. Snyder, of Whitehall, a forwarder, who says this:

"Perhaps I am not so conversant with the working of the canal as Mr. Jillson or Mr. Martin; as regards the damages, I think his estimate is very low; he didn't take into account the amount of property these breaks will drive next year—next spring for instance—upon other routes; he is engaged in an ore trade between here and Troy; we are engaged in the general merchandise trade between New York and Montreal; as regards merchandise, we pay for instance \$100,000 a season; had we had the canals this season it would have been very great; that has gone by rail and by other ways; what we have got on our boats perhaps might be 1,500 or 2,000 tons of merchandise, going to both sides of the lake and going to Montreal; we have had goods in our custody over four weeks, shipped from New York over four weeks ago, which we cannot get through; he didn't take into account the damage, not only this year, but next year and the year after; it is going to take a long time to get our customers back to run their freight through this canal; if you were buying \$10,000 worth of goods, you would want to get them home in a certain time, and would not take the risk by the canal, but would ship them by rail or some other conveyance; we have had goods this spring—nails more particularly—come up from Troy, Albany and New York, to be shipped by our steamers to Plattsburgh and Port Kent; we put them into a canal-boat and passed through the lower lock to come up the canal; but the parties finding that there was no canal, have had their nails shipped by rail; we did that this spring and last spring; last spring we took out an entire boat we had got locked up here, on account of the break at Fort Edward. We shoved it back on the railroad and discharged her, and forwarded on by rail. The parties wanted to realize on their goods. A hundred tons of coal are some money to them. The same thing has occurred to my knowledge for almost four years; detentions, and then goods shipped more or less by rail after they had arrived at these places. Last year and this year it has been the worst, very much worse than the two former years."

Many more witnesses were examined, by this committee, all of whom testified to the same effect. Complaints had been made to the proper officers, but all to no effect. It seems that the State officers were completely under the control of the contractors, and so directed the business of the canal as to put the greatest amount of money into the pockets of the contractors without refer-

ence to the necessities or the demands of the people along the line of the canal. Another subject I have to refer to in regard to the management of the canals, is the formation of combinations and rings among the contractors by which the State has been compelled to pay more for work, far more, than it was fairly worth. Without going into the details of the testimony that has been taken upon this subject, I may be permitted to refer generally to the fact that on the 28th of December last, biddings were to be opened by the contracting board for contracts for repairs of works on the canals. These contracts have five years to run. The contractors had their attention called to these contracts, and they assembled here in the city of Albany. They seem to have got together, as if by instinct, at Stanwix Hall. The biddings were to be opened on that day at twelve o'clock. The contractors organized themselves into a meeting or convention, if you please. They appointed a chairman; they appointed a secretary; they appointed a treasurer; and they determined that of all the contracts to be given upon that occasion, none should be given to any except those who composed that Stanwix Hall ring. In order to prevent competition, they put up the different biddings of the different contracts that were to be bid for among themselves, they said, "Here is a contract; it is worth so much money to do it; now who wants that contract?" and the contractor among them who would agree to pay the highest amount as a bonus into the treasury of that convention, to be divided among the members thereof, was to be entitled to the contract. He was to have all the biddings put into his charge. He was to pick out that bidding which he chose to do the work for; and by a process which was made easy, from the rules adopted by the contracting board, he could put a drop of ink here on one proposition, make a little scratch or an erasure there on another proposition, and thus go on all the way through with all the propositions lower than the bid he intended to get the work for; and then he would take all these propositions and hand them to the contracting board, and they would meet and look over them, and throw out every proposition that infringed upon these rules in regard to blots and erasures and interlineations until they came to the one good perfect bid that the contractor put in, and upon that he would be awarded the contract as being the lowest legal bidder. It so happened that on that day these contractors wanted time to complete their arrangements. As I have stated, the biddings were to be opened at twelve o'clock; but they were not able by that time to get through with all the contracts to their satisfaction, and they resolved that the bidding should be postponed to a later hour in the day. Well, one would think that was a very hard thing to accomplish. One would think that the contracting board were the agents of the people of the State, bound to attend to their interests, in the most prudent, economical and advantageous manner; and that they would not consent to the request of any class of contractors, which might seem to be at variance with the best interests of the State. That would seem to be the character that ought to be possessed by the

agents of the people. But the contractors knew these officers better. The contractors appointed a committee to go up to the board, and request the postponement of the bids. And what do you think was the reason which they went there to assign? That it was a very stormy day; that the roads were blocked up with snow; that there were doubtless many contractors on their way to Albany that were snowed in at different places; and if the bidding was to go on at twelve o'clock, there would not be as free competition as at a later hour! We may stop here and admire the generosity and the public spirit of these contractors. About to bid for work for five years, calculating to make a profit, and yet in a spirit of generosity which ought to be enrolled in our records, they seem to have regard for their absent brothers, who by misfortune were not able to get there in time to compete with them; and they went up there and magnanimously said to the commissioners, "We are here to put in our bids; we are here desiring to make contracts; but we desire to delay this matter, to let others, who have been snowed in at a distance, come in and have a chance." Let us see the means that they have adopted to effect this object. The testimony of Mr. Eli T. Bangs states that he had been a contractor; that he was at the meeting at Stanwix Hall that was going to combine in order to affect the bids. He testifies:

Q. The bidding was to close at twelve for the first advertisement? A. Yes, sir.

Q. Were you able to get the combination completed by that time? A. We were not quite; we had the combination and the arrangements all made; I was auctioneer, and cried off the sections; Louis Eaton was secretary, and Charles Case president; we had some resolutions offered and passed fixing the organization and we found we had not time; we went through and sold several of the sections.

Q. Was not Gale the auctioneer? A. He was auctioneer at the last, after the adjournment. Then we proposed that we had strength enough to go up there and propose an adjournment.

Q. Who proposed that? A. Well, Dr. Dennison, George Lord and myself.

I shall have occasion to speak of these gentlemen in other part of these canal matters. I refer now to Dr. Dennison as being of Syracuse, that fortunate place in regard to all canal matters.

Q. That you had strength enough with the canal board to obtain an adjournment? A. Yes, sir.

Q. Was that talked of—how that should be done? A. We started up, all hands; we adjourned our meeting and went up to the State Hall, the canal commissioners' office.

Q. Who did you find there? A. We found Alberger, General Bruce and the auditor, Mr. Dorn, and Goodsell.

Q. The whole board was there? A. Seemed to be.

Q. What time did you arrive up there? A. I should think, perhaps, ten or fifteen minutes before the time.

Q. Was there any arrangement as to which man should deal with each of the members of the board? A. Yes.

Q. How was that fixed? A. Tom Gale was to fix the auditor, Doctor Dennison and Belden were to fix General Bruce, and Lord was to fix Alberger, or let them understand the programme in order to fetch the adjournment.

Q. What programme? A. The programme we were making out down there.

Q. Was it that they were to be told you were making a programme? A. Yes, of course that was to be understood or we could not carry it through.

Q. Do you know whether they were told the reason you wanted an adjournment? A. Well, I don't know any other reason. When we went up there they did not seem to act as though they were going to adjourn, and there was some little whispering round, and then the aspect of things changed, and they adjourned it.

Who can wonder? Those generous, noble-minded, unselfish contractors were seeking to get the bids postponed in order to allow others to come in and bid with them! When they went forward to this canal contracting board, to utter their whispers, we may be sure that they were in truth "whispering angels!"

Q. Have you any doubt but what they were told you were getting up a combination? A. That is what I supposed, from all appearances; we found no difficulty in fixing our programme.

Q. Did Dennison and Belden look out for Bruce? A. They were whispering to him.

Q. Did Lord see Alberger? A. They were whispering. I could not hear what was said.

Q. Then was there an adjournment? A. Yes.

Q. Till what time? A. Till afternoon; it seems to me it was four o'clock.

Q. Who was to see Mr. Dorn. A. I think Willard Johnson; he was designated as one to talk to Dorn; they canvassed round to see who had the strength.

All the officers of the canal board were examined. They of course denied that they had any knowledge of any combination. But there were some pertinent questions put to them in reference to these magnanimous contractors, and the reasons they gave why they wanted the postponement. Mr. Alberger was examined:

Q. Do you recollect their making a request of the board to postpone the hour of putting in bids till four o'clock? A. I do.

Q. Was that granted? A. It was, to some hour; I don't recollect whether it was four o'clock.

Q. Who asked to have this meeting adjourned to four o'clock? A. I have no recollection.

Q. You did not suspect what that swarm of contractors that appeared before you just before twelve o'clock meant? A. Yes.

Q. To get it postponed? A. Yes.

Q. You believe that they came for that purpose? A. To get it postponed?

Q. Yes? A. Certainly.

Q. Did it not occur to you as a little queer that contractors who were on the ground with their bids should wish a postponement in order to have more competition? A. Well, I don't know whether we did or not; I can't recollect?

Q. Did you ever know a case before, in all the history of your canalling, where the contractors

themselves were asking to put it off, to get more opposition? A. No, sir; I don't recollect.

And I presume if he were to live until doomsday he never would find another occurrence of that kind. So much for the unsuspicious Mr. Alberger. Now let us see what Mr. Bruce says on this subject:

Q. Do you recollect a letting that was had of work, the 28th of December last at Albany, or an advertisement of letting? A. Yes, sir.

Q. The board advertised to close the propositions at twelve o'clock, did they, first? A. I think it was twelve o'clock; that is the usual hour.

Q. Where did the board convene that day? A. At the commissioners' office, where the board usually meet.

Q. Do you remember between eleven and twelve o'clock of Mr. Belden, Mr. Dennison, Mr. Bangs, Mr. Johnson, Mr. Selye, Mr. Gale, and several other contractors, coming up and appearing there and making an application that you should postpone the time of putting in bids? A. Yes, sir; I remember some one, I can't tell who were there; there were a good many of them; I presume all you mention, and a good many more.

Q. You remember the fact that quite a number of these contractors came in there? A. Yes, sir.

Q. And making a request that there should be a postponement of the time until four o'clock? A. That the time should be extended, I don't remember the hour; I know a postponement was asked, on the ground that the roads were blockaded by a snow storm, or something of that kind.

Q. Was this request made by the contractors themselves? A. To the board?

Q. Yes? A. Well, I don't remember who made it; I can't say who asked that the time be extended.

Q. Don't you remember that this request came from the contractors, they coming up in a body, quite a large number of them appearing just before twelve o'clock? A. Yes, I remember there being a good many contractors there, but whether this was made by request of all the contractors, or not, I don't know; I should think it was Mr. Selye, but I am not certain, but my impressions are that it was Mr. Selye who asked to have the time extended by the board, but I would not be certain who it was; they were all in the room together, and the request was made by somebody, I don't know by whom.

Q. It was granted? A. Yes, sir, I believe the board voted to extend the time.

Q. Was it not a very suspicious circumstance that contractors that were present should be asking to postpone the time when they were there ready to bid under the pretext of having more competition? A. I did not regard it in that light at all.

Q. Had there ever been a case before where such a thing was done? A. I don't remember a time when it has been extended.

Now we will let Mr. Dorn speak of this subject:

Q. Did the board grant the application of the contractors to adjourn it until four o'clock? A. Yes, sir.

Q. For what reason? A. It was thought advisable by the board at that time, that there were but few bids in; I was under the impression that were not over three or four bids in, that there was a heavy storm, or something else that kept the bidders back.

Mr. Chairman, it was not the "heavy storm" that did this. The snows of heaven are not to be charged with this great crime that was perpetrated against the people of this State on that celebrated 28th of December last.

Q. Did you not think it a little queer that the contractors should want a postponement in order to have more competition? A. I don't know at present whether it was the contractors advanced the idea or the board themselves.

Q. Don't you recollect that a large number of them came in just before twelve o'clock and applied for an adjournment? A. Well, I recollect that there were a good many people in there on that day.

Q. These contractors? A. Yes, sir.

Q. Was there anybody else that had business there except the contractors and the board? A. I suppose everybody had business there.

Q. You don't recollect anybody but contractors? A. No, sir.

Q. You remember that it was on their application that the postponement occurred? A. I am under the impression now there was something of that kind spoken of by those men.

Q. It was granted? A. Yes, sir, the adjournment was granted.

Q. Did it not occur to you as suspicious that these contractors wanted a postponement in order to have more competition? A. No, sir; it did not at the time.

Q. After this application to postpone was made and some of the bids withdrawn, the contractors left again? A. I believe they all left.

Q. And they appeared again before four o'clock, some of them, and put in more bids? A. More bids came in in the afternoon, I know.

Q. When you came to canvass those bids you found a great many informal, stamps torn off, the face of the bids defaced, and various kinds of informalities, did you? A. Yes, sir.

Q. It was perfectly evidently from the inspection of the papers that it was done on purpose; that they were not accidental omissions or tearing off of stamps? A. I don't recollect of any stamps torn off.

Q. Well, from the manner of the erasures was it not evident that it was done from design? A. Well, I can't say anything about that.

Q. Did you not suspect, from the appearance of those papers, that there had been a combination of the contractors to buy up the bids? A. I knew nothing about it at that time.

Q. Did you not believe it? A. No, sir; I had no particular occasion to believe it.

Q. Did you not suspect, from the appearance of those papers, and from their having appeared there to procure an adjournment, that they were forming a combination? A. The adjournment was because there were not bids in.

Q. Did you not suspect, from the appearance of those papers, and every thing taken into consideration, that there had been a combination of

the contractors? A. Well, sir, that is a question I declare I don't know how to answer.

Q. You know whether you suspected it? A. Well, nothing more than natural suspicion of mankind.

Q. That suspicion you entertained? A. Well, I can't say that I did, particularly.

Q. Nothing more than natural suspicion, you say? A. Natural suspicion.

Q. I am not asking whether you knew that fact, but whether you suspected it; did you not suspect from the appearance of those papers that there had been a combination formed? A. Well, naturally so.

Q. Now, sir, I will go farther; did you not know perfectly well beforehand that it was to be formed? A. No, sir.

Q. Had you not been informed of it before the letting? A. No, sir.

Q. Had you not heard talk about it before the papers appeared? A. No, nothing about it at all before that day.

Q. About what time that day did you first learn it? A. I don't know whether it was before we got in session again or after; I can't swear.

Q. You can't swear whether it was before you got in session at four o'clock or after? A. No, sir.

Q. Who told you of it? A. I could not tell you for my life, sir.

Q. Where did you hear it? A. I could not say that for my life.

Q. Somewhere here in Albany? A. Yes, sir; I was not out of the city.

Q. That is your best recollection that you heard of it either before you went in or after, here in the city? A. Yes, sir; I was not out of the city.

Q. You did not let the work until the 31st; you adjourned until Monday? A. The record is correct.

Q. Did you tell any of your associates in the contracting board that you had learned of this combination, and, if so, whom did you tell? A. Not that I recollect of now.

Q. Did you not speak of it in the board? A. Not that I recollect now.

Q. Why did you not inform the board of what you had learned of this combination? A. I don't recollect of learning it; I don't recollect whether it was before or after we went into session.

Q. You learned it before the 31st? A. Yes, sir.

Q. Now why did you not inform the rest of the board that there had been a combination to wrong the State? A. *I presumed that the board all knew about it as much as I did.*

Q. Is that the reason you did not inform them? A. I don't know.

Q. Was the reason you did not speak of it in the board that you supposed they knew as much about it as you? A. I don't know whether I spoke of it in the board or not.

Q. Was that the reason you did not speak of it, because you supposed they knew as much about it as you? A. *I presume so, sir.*

Q. Did you not deem it your duty before these contracts were signed to move to reject all these bids? A. No, sir, I did not think it my duty; I did not know as the State had been defrauded.

Q. Did you not deem it your duty after learning of this combination to move to reject all these bids as a fraud upon the State? A. No, sir; I don't recollect that the bids were awarded that day.

Q. Did you ever make any such motion upon any such ground—to reject them because of this combination? A. I don't recollect of it; the record will show.

Q. Then you signed those contracts after you knew there had been a combination by which they had been obtained? A. I knew nothing of the combination except the rumor.

Q. You signed those contracts after you had heard of this combination without investigating it? A. I don't know what you have reference to by the combination.

Q. I mean this buying of each others bids. A. That is a matter I had nothing to do with.

Q. You signed them after you had learned the fact by information of this combination. A. Yes, sir.

Now, then, Mr. Goodsell, another of the board, is permitted to speak in regard to his suspicions:

Q. Do you recollect when quite a number of contractors came up to see the board, just before twelve o'clock, to get an extension of time? A. Yes; there was a good many gentlemen came up there; there was a terrible snow storm, and I understood there were a good many parties who failed to reach in time, and it would be desirable to extend the time for an hour or two, to enable them to get through.

Q. You know the contractors when you see them? A. Well, yes.

Q. You are acquainted with most of the contractors of the State? A. Yes, sir.

Q. Do you recollect of quite a number of them appearing before the board, a short time previous to twelve o'clock, and making an application to postpone the hour of receiving bids? A. Well, I don't remember about that; the proposition was made, but how it was made, or by whom, I do not distinctly recollect.

Q. Don't you recollect quite a number coming up into the commissioners' room just before twelve? A. Well, there were a great many in there.

Q. There was nobody had any particular business there except contractors? A. No, sir; I think they were waiting the hour of twelve for the opening of the bids.

Q. Don't you recollect Mr. Dennison, Mr. Gale, Mr. Bangs, Mr. Johnson and a number of others coming up there? A. I think they were all there.

Q. You understood that those contractors who came up there wanted the time extended? A. That was my impression.

Q. Did it not rouse your suspicions that they should come up there for the purpose of having the time extended, and thus creating more competition? A. I thought it was a very reasonable request.

Q. Did it not strike you singular that they should want the time extended in order to have more competition? A. I did not think of it at the time at all.

Q. That did not occur to you at the time? A.

No, sir; it occurred to me at the time as a simple act of justice—that a large party were waiting to get there.

Q. Do you know a single man who arrived after that? A. No, sir.

Q. Was the time granted? A. Yes, sir; I believe there was a vote, and it was put upon the minutes of the board, if I remember right.

Q. You recollect when the bids were opened after four o'clock? A. Yes, sir; I was there; it was a matter of duty for me to be there.

Q. There were a large number of bids that were informal, some with stamps torn off and marked up, and made informal in various ways? A. Yes, sir.

Q. Did you not know that the contractors formed a combination to buy up the bids to control the work? A. No, sir, I did not.

Q. From the fact of the way in which those bids came in, and the fact that the contractors desired an extension, did you not suspect it? A. No, sir.

Q. You did not even suspect, from the appearance of those bids that there had been a combination? A. No, sir.

Q. Had you suspected that the bids had been put up at auction and sold, would you have consented to a letting? A. No, sir; I would not.

Q. When did you first hear of that combination? A. I think I did not know anything about it until I saw it in a newspaper.

Q. Did you believe it then? A. I thought it was almost too monstrous for belief.

Q. Did you not inquire into it, and ascertain that there had been such a transaction at Stanwix Hall? A. No, sir.

Here are four canal officers charged with the great interests of the State, in regard to the letting of work for the space of five years; and they suspected nothing, when no other sensible man outside of that board could possibly have witnessed what they witnessed and not had his suspicions excited. I say, in regard to these officers, that the people of the State of New York have been most singularly discriminating in their judgment in the selection of *honest* men to attend to their rights. We know the poet says that:

"Suspicion always haunts the guilty mind."

These men had no guilt in their minds; they had not the *least* suspicion. Gentlemen came up there in all the magnanimity which it is said these contractors presented. They went around whispering in their ears. No suspicion was excited. I may say that a greater combination of innocence, simplicity, and childishness, cannot be found in any department of the government of this State, than is presented by this canal contracting board, if you may credit the testimony which they themselves give under the solemnity of their oaths! Now, what was the effect of the action of these innocent, unsuspicious men, under the influence of these whispering angels? That the contractors got the contracts; that they have inflicted upon the people of this State for five years to come some most onerous and extravagant contracts. I shall allude to some of them, and I will take up the case first of what occurred near

this place—the case of the Albany basin, called section No. 1 of the Erie canal. In December, 1866, propositions were received for the excavation of the Albany basin, at so much per cubic yard. Auditor Benton gives the following account of it:

Q. You are familiar with section No. 1 on the Erie canal and its locality? A. I have been familiar with it for some time.

Q. You recollect the letting that was made in December? A. Yes, sir.

Q. This was a large contract? Yes, sir; but let me interlude, as one of the contracting board, that I refused to have anything to do with letting that, unless the excavation for the basin was done by the yard. Therefore, I presume there was an estimate, and that was made by Mr. Jenne.

Q. Your recollection is that there was such an estimate, because you would not have gone on without it? A. I know I was told so.

Q. Do you recollect the extent of the estimate? A. It was 100,000 yards in the gross.

Q. At what price? A. That I don't know anything about.

Q. You probably knew at the time? A. It is pretty likely I did, but I cannot repeat it.

Q. Of course, the price would be as important as the engineer's estimate of the quantity in determining the cost? A. I presume so.

Q. Mr. Jenne testifies that he estimated it was worth forty cents a yard to take that out? A. I do not know how that was.

Q. You understand that by this contract made by the board with Mr. Gale, it was let at seventy cents a yard? A. Yes, sir.

Q. Assuming that the engineer's estimate was forty cents a yard, was it not a wrong act in the board to let it at seventy cents? Would not their duty require them to pronounce the bid excessive, if that was the fact? A. Probably it would.

Q. That contract ran for five years? A. Yes, sir.

Q. They are paid, I suppose, every month? A. They are paid every month upon the round sum. There is this modification to it: The 100,000 yards was all spread over the five years.

Q. There was no limit in the contract? A. No; but that was the assumption, that one-fifth of the 100,000 yards was to be taken out each year; now then, we pay the monthly round sum of \$70,000; I don't know the amount as shown in the contract.

Auditor Benton refers to Mr. Jenne, one of the engineers; and here is what Mr. Jenne says:

Q. When you made an estimate of the earth to be taken out of this Albany basin at forty cents per yard, how many yards did you estimate to be taken out to complete the work? A. 100,000 yards.

Q. Was that by actual measurement or mere estimate? A. Not by actual measurement at that time; I had taken soundings of the basin a year or two previous.

Q. Have you measured since? A. No, sir.

Q., Do not you think the contract will show more than that? A. It may before the end of five years.

By Mr. Stanford :

Q. Was that estimate made for five years or one year? A. It was made with the idea that the work would go on in the basin, and that the improvement going on in the basin would prevent the filling up as it did the year before.

Q. Does that run for the whole five years? A. Yes, sir.

Q. Do not you think it will be over 300,000 yards? A. I could not tell.

Q. You think it will be very much more than 100,000? A. If the effect of the improvement is what I anticipate, it will not.

Q. They are not a quarter through the work, are they? A. They are over more than a quarter of the ground, but they are excavating the most shallow points in the basin; they are excavating above Columbia street bridge, most of it.

Q. Was there any work done on the lower aqueduct during this last winter? A. Yes, sir.

Q. What was the character of that work, and by whom done? A. The character of the work was strengthening the aqueduct—the trunk.

Q. Was any planking done? A. Some planking done where they had to tear up the floor.

Q. By whom was it done? A. It was done by the repair contractor.

Q. At his expense and cost? A. No, sir; it was reserved from the contract at the time it was let; he was paid for doing it.

Q. Who was the contractor? A. Thomas Gale was the contractor.

Q. Belden & Johnson?

Belden of Syracuse, bear in mind.

A. Yes, sir; it is in the name of another party; Gale is the assignee.

Q. They were paid an extra price for doing the work? A. Yes, sir. On the upper end of the aqueduct the boats would knock the piers off in coming around the curve.

Q. How much was paid for the work? A. It was something over \$20,000.

Q. That was excepted from the contract? A. Yes, sir; in the notice of the letting.

Q. Did they get that work done by advertising and public letting or by private letting? A. I made an estimate of the cost of the work. As I understand it was judged better to let them do it, as they had got the contract to carry through, than to let the superintendent do it. The superintendent was going to do it, but they had an interest, and it would take more than five years; it was a large structure.

Q. How much was your estimate? A. They were paid the price that I estimated; I made the estimate of the cost.

Q. The contract was based upon your estimate? A. Yes, based upon my estimates. Long before they had anything to do I made an estimate for the commissioner, who wanted to know how much it would cost.

Q. Did the commissioner let that work to Gale, Belden & Co., without advertising? A. Yes; it was not advertised.

Q. Who made the contract with them? A. I think the arrangement was made by the superintendent; the superintendent had the charge of it; it was under the superintendent; he was going to do it himself, in the first place.

Q. Who was that superintendent? A. Mr. Slack.

Q. Where does he live? A. In Schenectady. Q. He was appointed by Mr. Dorn? A. He was appointed by the Canal Board.

Q. Do not you know that Dorn was consulted and indorsed that letting? A. I have no doubt he was.

Q. The contract was made directly with these contractors without advertising? A. Yes, sir.

Q. And was it not let at a higher figure than your estimate? A. No, sir.

Q. It was let at your estimate? A. Yes, sir.

Q. They went on and did it, and received their \$20,000? A. Yes, sir, and the resident engineer measured the work done.

Q. Who is your resident engineer? A. Mr. Oscar L. Wetmore.

Q. Where does he live? A. At Albany.

Q. How long has he been on the canal? A. He has been resident engineer since the first of March, or some time in April, 1865.

I refer to this for the purpose of saying in regard to testimony I shall refer to by and by, about this canal contracting board, though they put no reliance whatever upon the estimates of this Mr. Jeanne; yet on this occasion, when he made an estimate of \$20,000 as the probable cost of the work, they put it out to their favorites at that sum of \$20,000 without advertising for bids, or giving any one else an opportunity to come in competition with the favorite of this canal contracting board.

The hour of twelve having arrived, the PRESIDENT resumed the chair in Convention, and, under the previous order, declared the Convention adjourned to Monday evening, September 8th, at seven o'clock.

So the Convention adjourned.

MONDAY, September 9, 1867.

The Convention met at seven o'clock.

The PRESIDENT, *pro tem.*, Mr. Folger, in the chair.

The Journal of Friday was read by the SECRETARY and approved.

The PRESIDENT presented a remonstrance against the abolition of the Regents of the University of the State of New York.

Which was referred to the Committee on Education.

Mr. BICKFORD—I offer the following resolution, and ask that it be laid over until to-morrow morning.

The SECRETARY proceeded to read the resolution, as follows :

Resolved, That debate in Committee of the Whole on the report of the Committees on Finance and on Canals, be limited to one hour to each speaker, until the close of the evening session of September 10th, and after that to fifteen minutes, and that the Committee of the Whole report back to the Convention the said reports, and any amendments they have made thereto, at twelve o'clock at noon of the 12th of September; and that debate thereon in Convention be limited to fifteen minutes for each speaker.

The PRESIDENT *pro tem.*—This resolution is laid on the table, at the request of the mover.

Mr. HATCH—I offer a resolution.

The SECRETARY proceeded to read the resolution, as follows :

Resolved, That the Committee upon Finance be requested to inquire into the expediency of introducing into the financial article a section, as follows: after the repayment of all the advances of the State and the interest upon the same for the construction and maintenance of said canals, no more or greater toll shall ever thereafter be charged or levied upon the said canals than shall be sufficient for their ordinary repairs and further improvement.

Mr. HATCH—If it is in order I desire to present my views to the Convention now upon this resolution. I will proceed if the Convention will indulge me.

The PRESIDENT *pro tem.*—There being no objection, the gentleman will proceed.

Mr. HATCH—My object in presenting this resolution at this time, sir, is to lay it upon the table and have it printed, for the purpose of inviting the attention of the members of the Convention to the financial section in the resolution. A similar section to that, I placed in the financial article that I proposed in the minority report which I had the honor of submitting, as a member of the Finance Committee, to this Convention, as against the financial propositions in the majority report of the Committee on Finance. The canal policy recommended by the majority of that committee is non-progressive, and if adopted by the Convention would prove most disastrous to our canal system. It is the opposite of that well-timed policy which has existed ever since the canal system of the State had its inception. To leave our canal system without any improvement and only use enough of the revenues for ordinary repairs for twenty years—all must know, long before the lapse of that period there would be no revenues to appropriate, and all improvements would be unnecessary. Our canals must be improved as the commercial necessities of the present and the future western trade demand, or else this trade upon which our canals now entirely depend, will seek cheaper and more ample channels to the Atlantic. The policy which I recommended in my report was one of progressive improvement, which would accomplish the object sought for in this financial section, of making our canals free, except slight tolls, for their maintenance, upon the transit of the property of all the citizens of the United States in less than ten years. The financial section which I now propose, will secure this object, and then the canal revenues will be liberated, and can only thereafter be used to maintain and improve those channels of commerce through our State, which have been constructed and paid for out of tolls levied upon the property of citizens of other States passing through them. It is known, and it has been a common complaint from the West for years, that the State of New York levies tribute upon the property of the citizens of the West, passing through this State. The commercial conventions which met in Chicago and Detroit in 1862 and 1864, expressed their views in relation to this subject, in something like the following words:

“Public sentiment requires, and has a right to

demand, that the State of New York shall hold this great thoroughfare—this connecting link between the East and the West—not for local aggrandizement, or State revenue, but as the trustee of the nation; and impose only such tolls on commerce as shall be required to preserve the integrity of the work, and ultimately pay the cost of construction.”

These views are sound in political economy, and such substantial adoption of them in the future policy of the State toward her sister States as would, by constitutional provision, as I now propose, make the Erie canal hereafter a free, national canal, would be a measure of most enlightened policy and as promotive of the interests of our own people as honorable to the commonwealth. The public sentiment of mankind, as well as the dictates of political economy, require that products of vital and common necessity to the laboring classes such as form the bulk of commerce upon the Erie canal should only be so taxed as to insure adequate and complete means for their transit. Sir, these views cannot be controverted, and I believe that we are called upon now, in making a Constitution that shall exist for twenty years, to incorporate this fundamental principle in political economy, in the organic law of our State, and, that now is the time to initiate this liberal, sound State policy. Sir, there is a higher, a more solemn consideration connected with it. I believe that it would be only fulfilling a constitutional obligation, and placing a fundamental principle in the Federal Constitution itself—the principle of free trade and free commerce between these States. All know that before the adoption of the Federal Constitution, and in colonial times, embarrassments and restrictions upon internal trade existed. The evil was of so great magnitude as to form a controlling reason for the adoption of a national Constitution, by which commerce between the States might be regulated and controlled. The whole spirit of the Constitution as well as State and national policy, required that invidious measures should not be adopted in any State, and that each State, in this view most especially, should regard itself as but a part of the great whole—a part of a great nation, the prosperity and harmonious development of whole and part, in most important measure, dependent upon substantial freedom in commercial communication of each with all the others. The Constitution of the United States, in order to carry out this policy, provides that rivers and lakes shall be free to all the citizens of the United States. Now, sir, I believe that the artificial connections between these rivers and lakes, by canals constructed by State enterprise, should be made equally free, after repaying the cost of their construction and the expense of maintaining them. This proposition seems to me to be plain and logical, and scarcely needs an argument in its support. It is well known that the State of New Jersey adopts the miserable narrow policy of taxing not only the citizens of other States for transit through the State, but the property of citizens of that State. This must be regarded as unconstitutional, as it is unsound in political economy, and New Jersey has deservedly been stigmatized by her

sister States as the State of the Camden and Amboy railroad. I believe, sir, that in making a Constitution, this time, we should declare in that Constitution the nationality of our public works, and, that in the future, as in the past, we will levy no tribute upon the property of a citizen of another State upon account of our geographical position. We should declare them national and free canals, after repaying the cost of their construction and their maintenance, and I believe the citizens of this State would take patriotic pride in setting that example to our sister States in the Union. This section which I now propose, will adapt itself to, or fit in to, any financial scheme that has been proposed here in relation to the canals, and after the adoption of a section in the Constitution which shall declare, as I have no doubt it will, that the canals of the State of New York shall be held by the State forever—right after that I shall move that this section be inserted, which, in effect, declares that the State of New York will forever hold her canals as trustee for the benefit of the nation. At that time I shall present some further considerations in support of it, claiming that the adoption of such a policy will place our canals in a position to receive national aid—supported as such a proposition would then be by the almost controlling political power of the Northwest in Congress, for the commercial advantages which would almost entirely accrue to them. Adopt this policy, and it is plain to see what the effect would be upon existing and projected rival routes to divert from us our western trade. I will not trespass further at this time upon the indulgence of the Convention.

The resolution of Mr. Hatch was referred to the Committee on Finances.

The PRESIDENT *pro tem.* announced the following as a committee for the purpose of considering the expediency of making a Constitutional provision requiring the Legislature to provide by law for the permanent care of the disabled soldiers of the State:

Mr. AXTELL, Mr. REYNOLDS,
Mr. HISCOCK, Mr. HITCHMAN
Mr. ARMSTRONG.

The Convention then resolved itself into Committee of the Whole on the report of the Committee on Finance and on Canals, Mr. SMITH of Fulton, in the chair.

The CHAIRMAN—The pending question is the motion of the gentleman from Erie [Mr. Verplanck]. The gentleman from Kings [Mr. Barnard] has the floor.

Mr. BARNARD—In continuation of the subject of the Albany basin, or section number 1 of the Erie canal, I state, that at a meeting of the contractors held at Stanwix Hall, this contract was sold by them to Belden, Dennison and others for \$19,000, which was divided among the bidders. The parties who bought it sold it to Dennison for \$21,000, making in all \$40,000 paid by him to get control of the contract. What Mr. E. T. Bange testifies that Mr. Dennison said of this matter is as follows:

Q. What was said by Dennison as to how they could afford to pay so much? A. We talked

about this section in my room; we had our bottle of whisky and pipes and segars and things, and talked this thing over; Doc. Dennison says: "This is a big thing; there is this excavation of the basin that has always been included in the contract heretofore and we have got that fixed outside; we can afford to pay a good price for it, for we can buy up this inspector, and we can get all the money the auditor dares to pay; we can clear \$600 a day; we will run two dredges there."

Q. What did he say the contract was worth? A. He says, "we can make a million of dollars on it;" I said, "you have got that pretty high, I think the contract is worth about half a million."

Q. Do you believe if they had not been interrupted and permitted to carry it on the five years that it would have been worth half a million? A. I do; I would give now \$200,000 for it.

William C. Stevens was the successful bidder. He was evidently a mere man of straw. He was examined in regard to his bid, and gave the following testimony:

Q. Were you a bidder? A. I was.

Q. For what? A. Section No. 1 Erie canal, I believe.

Q. Were you a successful bidder? A. I presume I was—yes, sir.

Q. How much is your bid? A. It appears to be \$70,000."

It appears to be a good deal more than that, but that is all he knew about it, although he was a bidder.

Q. Had you ever seen section 1 of the Erie canal? A. I never saw it.

Q. Do you know where it is? A. I do.

Q. What is embraced in it? A. Section one of the Erie canal, as I understand it, includes Albany little basin; but as to the number of miles, I cannot tell.

Q. You did not know at the time you made the proposal how long it was? A. I did not; I will not say that, however; I did from the advertisement of the contracting board, but in no other way.

Q. Did you make this proposal of your own volition or at the instance of some one else? A. No one suggested to me to make it, but during the time that the contracts were being drawn up I suggested it myself, the notion of my being a contractor and bidding.

Q. Was the contract awarded to you? A. I understood it was.

Q. Did you execute the contract with the State? A. I believe I did.

Q. When? A. On the 31st of December.

Q. How soon after that did you assign it, if at all? A. The same day.

Q. To whom? A. To Thomas Gale.

Q. To whom was it you made the suggestion? A. It was the party I drew up the paper for, Charles E. Case and George Case.

Q. How long after the contract was awarded to you before you went into negotiations, and assigned the contract to Gale, or was that a preconcerted arrangement? A. There was no preconcerted arrangement as to what should be done with the contract if I got it; I was advised of it

by Mr. Gale coming to Fulton; that was the first I knew of it.

Q. He got you to come down? A. He did.

Q. And enter into the contract? A. Yes, sir.

Q. With an understanding that it was to be assigned to him? A. With no understanding whatever.

Q. How far did he come from his home after you? A. Fulton is about twenty-seven miles from Syracuse by rail.

Q. You asked no questions and he gave you no reasons? A. He merely said that section No. 1 Erie canal was awarded to me, and he wanted me to come to Albany.

Q. Did you go with him? A. Yes, sir.

Q. Did you have to give bail? A. For what?

Q. On the award for contracting? A. I think not; I don't recollect as to that now.

Q. Did you make a deposit? A. I had made a deposit prior to that.

Q. In what bank? A. The Citizens' National Bank of Fulton.

Q. How much? A. \$4,000.

Q. Did you deposit the money? A. I did not.

Q. What was the arrangement by which you got the certificate? A. I made no arrangement whatever; it was done by the parties who had left the papers there for me.

Q. Did you get anything for that assignment? A. I got paid for my services in coming here.

Q. Did you get any other pay for the assignment? A. None whatever.

Q. How much did you get? A. I got \$125 for my services in coming here and expenses, no more and no less; no other sum was ever paid me at any time by any person.

Q. Who did you get that from? A. I do not recollect who did pay me that. I state that just as I mean. I mean to answer your questions, and I am not going to be glibed or sneered at.

Q. You do not know who you got that money from? A. I do not recollect who I got that money from.

Now we come to the gist of this matter. It was testified that in the opinion of the contractor who finally got it that this contract was worth from half a million to a million of dollars. It was testified by one of the witnesses that he would give \$200,000 for it at any time, and here now we come to see what this Stevens, who has sworn he had nothing to do with anybody else in getting this contract, got for the assignment.

Q. Was it paid in currency? A. It was paid in currency.

Q. Where? A. In the auditor's office.

Q. Who was there? A. I think a man by the name of Peterson and a man by the name of Belden.

Q. Belden of Syracuse? A. Belden of Syracuse; I think he was there.

Q. Is Peterson a contractor? A. He was a former contractor, as I understood, on this same section; Mr. Gale was present, and Mr. George Case, I think; but as to which one of these parties handed me the money I have no recollection, and could not state without reflection; at that time I was quite unwell and disliked very much to come; I was sick and paid no particular attention to that, because I wanted to get away

from the city; you may take that as a mere excuse or not, but the statement I have made is true.

Q. Did you make this bid for superintendent of section No. 1, Erie canal, with the intention at the time of assuming the work in case it was awarded to you? A. I had no design whatever—no preconceived motive or intention about it whatever; it was not in my line of business, I am frank to say.

Q. Did you have any adviser in reference to making the bid? A. None whatever as to the amount.

Q. Did you have any one with whom you advised on this subject? A. No, sir.

Q. How came you to leave the amount blank? A. Because I had no knowledge whatever as to what it should be taken for.

Q. Who was to fill up the blank? A. Whoever took the papers.

Q. To whom was it you confided authority to fill in? A. My impression is that George Case took the paper.

Q. To whom did you confide the discretion of filling it up? A. I left that to George Case.

Q. How was he to ascertain the amount? A. In the best way he could.

Mr. Auditor Benton gives the following testimony as to this bidding:

Q. Now give us the list of proposals on section No. 1 of the Erie canal? A. The proposals for this section are for the keeping of the section in repair at a fixed price, and for the excavation in the Albany basin at so much per cubic yard.

The bids are as follows (reading from the book): James Spenser, \$54,000 and 60 cents per cubic yard.

Henry G. Radcliff, \$63,940 and 40 cents per cubic yard.

Anson Knibloc, \$65,000 and 65 cents per cubic yard.

William C. Stevens, \$70,000 and 70 cents per cubic yard.

The contract was awarded to Stevens.

There were other bids that were higher.

Q. What action was taken in reference to this contract? A. The book shows that on the 29th of December, the following resolution was offered by Commissioner Alberger:

Resolved, That the proposal of James Spenser, to keep in repair superintendent section No. 1 of the Erie canal, for five years, from and including the 1st day of January, 1867, be and the same is hereby rejected on account of not having on it the revenue stamps that are required by the regulations of this board.

Q. What was the next action of that committee? A. The resolution of Mr. Alberger was adopted.

Q. What was the next action? A. The following resolution was offered by Commissioner Dorn:

Resolved, That the proposal of Anson Knibloc, to keep in repair superintendent section No. 1 of the Erie canal, for five years from and including the first day of January, 1867, be and the same is hereby rejected upon the ground that there is not a bond accompanying it, as required by the regulations of this board. Adopted.

Commissioner Dorn offered the following resolution:

Resolved, That the proposal of Henry G. Radcliff to keep in repair superintendent section No. 1 of the Erie canal, for five years from and including the first day of January, 1867, be rejected on the ground of informality, consisting of the erasure of the word 'thirty,' and adding the words 'forty-five,' and not being noted as required by the regulations of the board.

On calling the ayes and noes, the amendment was adopted by the following vote:

Ayes—Messrs. Bruce, Dorn and Alberger—3.

Noes—Messrs. Benton and Goodsell—2.

Q. State the next proceeding of the board in reference to that section? A. Commissioner Dorn offered the following resolution:

Resolved, That the contract to keep in repair superintendent section No. 1 of the Erie canal, for five years from and including the first day of January, 1867, proposals for which were duly advertised for and received at the canal commissioners' office in the city of Albany, until 4 o'clock P. M., on Friday, December 28th, 1866, be and the same is hereby awarded to William C. Stevens, he being the lowest legal bidder therefor, in accordance with the act, chap. 105, Laws of 1857. Lost.

Q. Are the ayes and noes given? A. No, sir, not here.

Q. Read the next proceeding. A. Mr. Bruce offered the following resolution:

Resolved, That the proposal of William C. Stevens, to keep in repair superintendent section No. 1 of the Erie canal for five years, from and including the first day of January, 1867, be and the same is hereby rejected on the ground that the price is excessive, and disadvantageous to the State. Adopted. Commissioner Dorn voting in the negative. The next action was this: Commissioner Alberger moved to reconsider the resolution rejecting the proposal of William C. Stevens to keep in repair superintendent section No. 1, Erie canal, for five years from and including the first day of January, 1867, and that the said resolution be laid on the table. Carried.

The next proceeding is this:

At a meeting of the contracting board, held on Monday, the 31st of December, 1866, pursuant to adjournment.

Present—Messrs. Benton, Goodsell, Alberger and Dorn.

On motion of Auditor Benton, the resolution to reconsider the rejection of the proposal of William C. Stevens to keep in repair superintendent section No. 1, Erie canal, for five years, from and including the first day of January, 1867, was called from the table, and the board proceeded to consider the award of the contract to keep in repair said section for the said term of years.

By Commissioner Dorn:

Resolved, That the contract to keep in repair superintendent section No. 1, of the Erie canal, for five years from and including the first day of January, 1867, proposals for which were duly advertised for and received at the canal commissioners' office, in the city of Albany, on Friday, December 28, at four o'clock P. M. of that day, be and the same is hereby awarded to Wil-

liam C. Stevens, he being the lowest legal bidder therefor, in accordance with the act, chap. 105, Laws of 1857. On motion of Commissioner Alberger, the resolution was unanimously adopted; Commissioner Bruce not being present. I believe that ends it."

Mr. Benton was examined further in regard to the particulars of this contract, and he goes on to say:

Q. The only clause in this contract relating to a limit is that contained in the notice to contractors? A. I believe so.

Q. That notice contains this language: 'There must be a price in the proposition for this section for dredging the Albany basin per cubic yard, besides the price per annum for keeping the section in repair. The quantity of material to be dredged out is estimated at 100,000 cubic yards; and this quantity will be used in canvassing the bids.' Is there any other clause in this contract as to the extent of the work; how deep they are to make the basin? A. To the depth of miter sill of lock No. 1.

Q. Now, if it should turn out that there were 300,000 yards in that basin to be removed, the party would get paid for that at the rate of seventy cents per yard? A. No, sir.

Q. Why not? A. Because he would not get paid only for the 100,000 yards.

Q. Why not? A. Because that is limited in the contract.

Q. Why do you say it is limited in the contract, when the contract is express that he shall have seventy cents per cubic yard for dredging the Albany basin to the depth of the miter sill of lock No. 1. A. Turn over to the specification.

Q. That is a mere estimate. A. That is a part of the contract.

Q. But you simply say in the proposition that it is estimated at 100,000 yards, on which the pay is based; is it not true that if it should be necessary in order to take it down to the miter sill to take out 150,000 yards, he would be entitled to be paid for that amount? A. I understand that in that specification it is limited to 100,000 yards.

Q. Do you say that as a lawyer? A. Yes, sir; I say it as an auditor; I should not pay for a single yard over 100,000 yards.

Q. Is that a fair construction of the contract? A. That is a fair construction of the contract, as I understood it, and as I understand it now.

Q. Is there anything in this proposal, the 'notice to contractors,' in your judgment, as a lawyer and an auditor, except an estimate of amount? A. An estimate how much was to be included.

Q. Is there anything in this contract, from beginning to end, except the bare estimate in the 'notice to contractors'? A. That was the limit of the work.

Q. Is there anything there except what I have read? A. No; there is nothing in the contract, from what I have read.

Q. Then is not the contract for compensation at the rate of seventy cents per yard, for all that is required to be taken out to bring it down to the miter sill? A. I will answer as an auditor, that

the contract only calls for payment for 100,000 yards of excavation.

Q. Suppose that don't take it down to the miter sill? A. Then it would go without the miter sill.

Q. Then would the contract be exhausted? A. Yes, sir; I am not talking as a lawyer, nor as a witness, but as an auditor.

Q. Suppose there were only 50,000 yards to the miter sill, would you expect to pay for 100,000 yards? A. No, sir; I should expect to pay for no more than the estimates of the engineer in the aggregate amounted to.

Q. Suppose, when the contractor had done his work, it should turn out by actual measurement, that to reach the miter sill he had excavated 50,000 yards? A. I should pay him for 50,000 yards.

Q. And suppose it should turn out by actual measurement to be 150,000 yards. A. I should not pay him for but 100,000.

Q. Do you understand under this contract that he is compelled, if there are 150,000 yards, to go to the miter sill? A. No, sir; I am now speaking of the whole basin.

Q. Then when he had reached his 100,000 yards, whether he had reached the miter sill or not, he would have a right to stop, because that is all he could get paid for? A. Yes, sir, that is all he could get paid for.

Q. And he would have a right to stop in pursuance of this contract? A. Yes; that is my reading and construction of this contract.

Myron Bangs was a bidder for this contract, and he gives his testimony in reference to it, which is very short but very pointed.

Q. Did you bid for this excavation in the Albany basin? A. I did.

Q. What was your bid per yard? A. I think it was about forty-five cents.

Q. And how much for keeping the section in repair? A. I think it was not far from \$50,000; that is my price; I intended to bid for that at that price.

Q. You prepared your bid at that price—that was your figure? A. Yes, sir.

Q. Is it your judgment that that work could have been done for that? A. Yes, sir.

Q. Don't you think that is a fair full price for that work? A. Yes, sir.

Q. You understood the contract was awarded at \$70,000 to Belden, Dennison & Gale? A. Yes, sir.

By Mr. Stanford:

Q. Seventy cents for excavation and \$70,000 a year for keeping in repair? A. Yes, sir.

By Mr. Mitchell:

Q. There were no other parties? A. There were other parties, but I think they bought them out.

Q. Your bid was \$50,000? A. Yes, sir; I think that was the bid.

Q. They let it at \$70,000, for five years; that would be a hundred thousand dollars loss to the State? A. Yes; I have figured it up since then, and I think there is \$300,000 of profit to them.

Q. You have made an estimate of how much profit there is to them? A. Yes; I think there is a profit of \$300,000.

Q. Of profit to Belden & Co.? A. Yes, sir.

Q. You have had experience at dredging? A. Yes, sir.

Q. You know pretty well what it costs to dredge, don't you? A. Yes, sir.

Q. Don't you think that dredging could be done for less than forty-five cents and make a profit? A. Yes, sir; I think it could be done for twenty cents—twenty-five cents at the outside.

Now we will come to what Mr. Alberger, the canal commissioner, testified as to this work. Mr. Jenne, you will bear in mind, was the engineer that made the estimate.

Q. You know Mr. Jenne? A. Very well.

Q. You know this was an important work, the excavating this basin? A. Yes.

Q. And was to be quite an expensive work to the State? A. Yes.

Q. It was so important as to attract your attention as a member of that board? A. I was well posted as to it, and knew it was a very important work.

Q. You also knew that the engineer, Jenne, had made an estimate? A. Yes.

Q. And the price per yard? A. I don't remember that.

Q. You knew that was forty cents per yard at the time? A. I suppose I knew what it was at the time.

Q. If your engineer estimated it at forty cents, would you feel authorized to let it at seventy? A. I am not governed by the estimates of the engineer or propose to be.

You will recollect when I read the testimony of Mr. Jenne, that when he made an estimate of \$20,000 as to some repairs that were to be made on this work, then this Mr. Alberger had so much confidence in Mr. Jenne's estimate that he was willing to give it out to his friends by private contract, for \$20,000 without inviting any competition.

Q. If your engineer in charge had made an estimate that it was worth forty cents per yard, would you feel authorized to let it at seventy without moving to declare the bid excessive? A. Yes, if I judged it was to the interest of the State to let it at seventy cents, or higher, I should let it.

Q. Did you believe it was worth seventy cents a yard to excavate that basin, with the engineer's estimate before you that it was worth forty? If so, what made you believe it? A. Well that needs a little explanation.

Q. Did you, in the face and eyes of the engineer's estimate, that it was worth forty cents a yard to excavate that basin, believe it to be worth seventy? A. In the first place, I don't remember the engineer's estimate.

Q. You say you knew it at the time. Assuming that he estimated it at forty cents, have you any excuse for letting it at seventy? A. I propose to answer that with explanations; I propose to answer it in my own way. For a number of years there had been a great deal of complaint by the citizens of Albany in regard to that basin, and the canal board, according to my recollection, advised, the winter before that, that the contracting board should take some action particularly in regard to that; and the contracting

board, to remedy the nuisance, determined to make it a separate bid; knowing the importance of the work and the anxiety to have the basin cleaned out, when I made that contract I felt justified in paying the price.

Now if there is any member of this committee that can ascertain where there is any reason contained in this answer of the canal commissioner, Alberger, he is possessed of more capability of understanding words than I am. They determined to make it a separate bid, so he says, to avoid the nuisance, and they made it a joint bid, the repairing of the section and the dredging of the basin.

Q. How does that excuse you for letting it at nearly twice the figure it was estimated it was worth? A. Because I don't put confidence in all the engineer's estimates."

In other words, you may judge by his actions if not by his words, that when the engineer's estimates are high enough to justify him in giving out a \$20,000 job to his friends by private contract then he puts confidence in the engineer's estimates, but when the engineer's estimates are so low that his dear friends are not likely to make any money out of it, then comes this answer: "I do not put any confidence at all in the engineer's estimates."

Q. Did you know anything at that time, and if so, what, that made you believe it was worth more than forty cents? A. I was satisfied from explanations made by the State Engineer that the work could not be done for that price.

Q. For forty cents. A. Yes.

Q. Do you swear that the Engineer, Goodsell, told you that that work could not be done for forty cents a yard? A. No, I don't say that.

Q. What did Engineer Goodsell tell you? A. I am going to give that as I recollect it—that Goodsell being a member of the commission for dredging the Hudson river, stated that the government would not allow them to dump where they had been dumping, that the towage was further than it had been, and that the large amount of dredging to be done, could not be done for that price.

Q. Goodsell told you that? A. That is my recollection of his statement before the contracting board.

Q. Will you tell us why, after voting to reject it as excessive, you turned, and at the next meeting voted for letting it? A. Certainly, the reason was in the explanation accorded by Commissioner Dorn of the large amount of work to be done, and the change in the method of letting these contracts from heretofore.

Q. That explanation was received from Commissioner Dorn? A. Yes.

Q. That changed your mind to vote in favor of letting it? A. Yes, sir."

Now, then, we will see a difference of opinion between Commissioner Alberger and Auditor Benton as to the extent of this contract. You will bear in mind that Auditor Benton has testified that, in his opinion, the extent of this contract was 100,000 yards, and if it took more he would not pay for it, and if it took less he would pay for no more than it took. Now, Commissioner Alberger says, in answer to this question:

Q. This contract for section No. 1, of the

Erie canal, provides that the dredging in the Albany basin is to be done at seventy cents per cubic yard, and in the special notice before the letting it was estimated that 100,000 yards would have to be taken out. Supposing that to go down to the miter sill, it was necessary to take out 200,000 yards, would the contractor get pay for the whole of it, according to your construction of the contract? A. I should judge so, sir.

Q. So that the fact that the bare estimate of the engineer that it was so much, would not control the amount of this contract? A. I should think not, sir.

You will perceive that he differs there from Auditor Benton, and it will be borne in mind that it is shown in the testimony that Auditor Benton is bound to honor the drafts for the work which may be made by this canal commissioner.

Q. Do you mean to say that at that time there was difficulty in finding contractors to do that at its proper price? A. I believe you can always get work done for the State by paying enough for it.

Q. Do you think there would be any difficulty in finding contractors to do this work for what it was worth? A. No, sir.

Q. You gave it to this man for five years? A. He is not to have five years to clean it out, but to clean it out and keep it clean.

Q. Do you believe there was any trouble in finding men to do that at its fair price? A. No, sir.

Q. If thirty or forty cents was its fair value, it was wrong to let it at seventy? A. I should judge so.

Q. Do you mean to say that under this contract this contractor is bound to clean all the mud down to the miter sill first, and then keep it so for five years? A. Yes, sir.

Q. What comes in has to be cleaned out? A. Yes, sir.

Q. If it is a million of yards? A. Yes, sir.

Q. At seventy cents a yard? A. Yes, sir.

Q. Is it not the duty of the commissioners to have the engineer's estimate on all work done by the yard? A. Yes.

Q. Is it not customary for the commissioners to be governed in a very great measure by the estimate of the engineer? A. Yes.

Q. And that you would, in all human probability, require an engineer's estimate on this work? A. Yes, most likely.

Q. Did you not consider that a very important work to the interests of the State? A. Very.

Q. Would you deem it doing your duty to let such an important work as that, without first ascertaining all the facts requisite to letting it properly to the interests of the State? A. No, sir.

Now, having got the opinion of this canal commissioner, I propose to show the opinion of competent persons, accustomed to make contracts of this kind, as to the value of such a contract. Wm. W. Wright gives his testimony as follows:

Q. Have you had a good deal of experience in dredging? A. Yes, sir, I have done a good deal of dredging.

Q. Have you owned dredges? A. Yes, sir; I have owned dredges, and chartered and hired dredges.

Q. You have done excavating with them? A. Yes, sir.

Q. Are you familiar with the Erie canal? A. Yes, sir.

Q. Both as a commissioner and contractor? A. Yes, sir.

Q. Also with the Albany basin? A. Yes, sir.

Q. The contract in this case is that they shall excavate the mud from the Albany basin and carry it so far as not to injure the navigation of the Hudson. The evidence as shown is, that some was carried three-quarters of a mile and some three miles? A. It varies a good deal; I was not the original contractor; I bought a man's contract at one time, and then I think it was to be carried very near five miles.

Q. Take it under such a contract as that, where it would not injure navigation; what, in your judgment, at the bidding of the 28th day of last December, for the contract to take out that mud down to the miter sill, would have been a fair and living bid to the contractor? A. Before I answer that I want to say that, if a contractor was required to put this material where I was required to put it at the time I had the contract, I should answer one price—

Q. How far was that? A. It was in the neighborhood of four or five miles below.

Q. Put it even at that? A. I think we paid for towing at that time six cents a yard.

Q. To carry it the whole four or five miles that you had to carry it, this large quantity, what, in your judgment, would have been a fair and living bid to the contractor? A. Twenty-four to twenty-five cents, if he took it where we did, down below.

Q. What difference would you make to take half of it three miles, and the other half a mile? A. Well, it would be worth half less—six cents in one case, and three cents would answer for the other.

Q. Making how much? A. Say twenty to twenty-one cents.

Q. This contract that has been let by the contracting board at seventy cents a yard, do you regard it as an outrageous contract toward the State? A. I regard it as just such a contract as the Central railroad would make if they contracted for wood at \$16 a cord, when it was \$4.50 to \$6; I would consider it no more outrageous to the corporation.

Q. This contract runs through the whole five yards to take it down to the mitre still. How many yards do you believe that will take—will 100,000 be a third of it? A. No, sir; I think the annual deposit will average well on to 50,000 yards a year; take what is in it now, and for the five years it would be at least 250,000 yards, honestly and fairly measured; there is a difference between measuring it in place and measuring it on scows.

Q. The evidence shows in this case that they measured it in scows. Assume they do. Do you regard that as a fair way of measuring? A. Sometimes, from the necessities of the case you can't measure it any other way; I think it could be measured in this case in place.

Q. If it could be measured in place, would you consider you would be doing your duty as a State

officer in allowing them to measure it in scows? A. No, sir; because there will be twenty-five per cent difference between what it will measure in place and in scows, because every shovel you go below the level of the miter sill will be so much more.

Q. In your judgment it would be twenty-five per cent more? A. Yes, sir; if measured in scows more than if measured in place, if you measure in scows the water is measured, and all the material you take out if you go below.

Q. While you were commissioner, and from the time of the repair contract system down to this last letting of the 28th of December last, was the excavation made in the Albany basin included as part of the repair contract of section 1? A. Yes, sir; from 1864, when the contract was first inaugurated, down to the time of this letting it was done as part of the contract price.

Q. What was the contract price during the years you were in? A. I think it was under Peterson's contract \$39,000.

Q. And that included taking out the mud and all to keep the basin down? A. Yes, sir; prior to that it was Johnson's for \$28,000, or thereabouts; prior to that it was Vernam's contract at about \$44,500.

Q. Which was the least? A. Peterson's.

Q. Did all these contracts include the cleaning out of the basin? A. Yes, sir.

Q. And mud was taken out under all those contracts? A. Yes, sir.

Q. Did all these contracts up to this last letting require that basin to be kept down? A. To the level of the miter sill, all of them.

Q. And if the contracts had been performed it would have been kept to the miter sill? A. Yes, sir.

Q. And they took them at these prices with that clause in? A. Yes, sir.

Q. This contract, independent of the excavation, to keep section 1 in repair, was taken at \$70,000? A. Yes, sir.

Q. Do you regard that as an unreasonable price? A. Yes, sir, I do; I regard it as an unreasonable price; it is a price that never could have been with fair competition.

Q. You are acquainted with the aqueduct between Albany and Schenectady? Yes, sir, the lower aqueduct you mean.

Q. That has been proved to have been let by private contract, outside of this \$70,000, and about \$20,000 worth of work done on that, as they claim? A. Yes, sir.

Q. Heretofore has the repair of that gone into this contract? A. Yes, sir, always into these bids.

Q. How can you understand that this should have been taken out and let by private contract unless it be to aid the contractors? A. I don't understand there to be any honest reason in letting it in this way, or in excepting it from this contract at all.

Q. Have you had any experience in reference to removing mud from this same Albany basin? A. Yes, sir; in about the year 1852 or 1853, one Minor King had a contract, which is, or should be, on file in the auditor's office, for excavation of this same material from the Albany basin, at

twenty-four cents per yard, with the directions of the commissioners to carry that stuff from four to five miles below Albany, all of which was carried there; none of it was ever left short; I purchased that contract, at the request of Mr. Osgood, from Minor King, and paid him \$250; Mr. Osgood owning both a dredge and tow-boat, and he did the work, I drew the money, and we divided about \$800 on the contract, over and above the \$250 I had paid.

Q. How much work did you do? A. Only about \$10,000.

Q. Labor was something lower then, of course? A. Yes, sir.

Q. What is the crew of a dredge? A. The crew of a dredge is about five men, the engineer, crane-man and three laborers.

Q. That is sufficient to run a dredge to advantage? A. Yes, sir; that is the dredge itself.

Q. At that time the cost of labor and fuel for a dredge would be how much per day? A. Labor and fuel about eleven dollars per day at that time.

Q. And now how much? A. Labor and fuel in 1866 and 1867, eighteen dollars, an increase of about seven dollars.

Q. How many men on the boats with the dredges? A. We had a small steamer, three men on the steamer, and three more would make the crew, and the five on the dredge would be eleven, for the whole concern, one dredge.

Q. How many yards can a dredge get out in a day? A. Such material as you find in Albany basin, a dredge ought to excavate from four to five hundred yards a day; if you measure in place it would be from four to five hundred yards; if you measure on the scows it would be an increase of twenty-five per cent.

Alexander Robinson gives his testimony as to the value of the work in this way. That he had been a contractor engaged upon the public works; that he used to work men on contracts formerly; that he was a young man in 1848 and along there; that he has always been acquainted with public works and his father was before him; that his father was one of the first men who built boats.

Q. Have you made up your mind what this mud could be taken out and carried the distance for, that they are carrying it? A. No, I have not made up my mind only so far as would concern myself. I would like the contract at thirty cents. I would like to have got it last fall.

Q. Do you believe that you could do it and have a fair profit from it at thirty cents? A. Yes, sir; the way everything is now, I would take it so do that.

Q. Why did you not bid last fall? A. I have not troubled myself much about bidding.

Q. Why? A. For various reasons; I was not in the "ring"; they used to tell about "measuring things up" or "measuring things down," and if a man had a contract they would drive him out—they say—I don't know anything about it.

Q. What were these considerations? A. One reason is, that I do not want to interfere with them; it was generally understood that if a man was not in the "ring" he could not get a contract,

although I had no idea they would get any such price as this, or I would have put in a bid.

Q. Would you be willing to complete that contract on behalf of the State for thirty cents a yard? A. Yes, sir; I will take it.

Q. And give good bail? A. Yes, sir; as good as any one would require.

Q. I mean responsible sureties? A. Yes, sir.

Q. You stand ready to do it? A. I stand ready to do it; I will take it at thirty cents a yard.

Q. Are you a man that would be capable to perform a contract of that kind, and give good bail? A. I always have.

Q. But I want it on the record. Are you a man capable of taking that contract and furnishing the requisite sureties? A. Yes, sir; I suppose so; I have always got what I asked for.

Q. You have no doubt you could get the bail?

A. None whatever. I would state to the committee that I have been interested in this basin; I have been doing business in it for a great many years, and the result has been from the way it has been managed for the last six or seven years that it would not float a light boat. I was aware that they were getting \$30,000 or \$40,000 a year, and that some years they would take more or less out of the basin, and the result has been that the basin has filled up so that it would be almost dry land above Plum street. At low water it was filled so that you could see the ground and could walk along the docks without wetting your feet. Our boats used to get aground. I was interested in this basin, and I was one of the parties anxious to have it in a different shape. I have had a light boat get aground just back of our store.

Q. Have you noticed what proportion of this job is now done? A. They have not done anything south of Columbia street bridge.

Q. Is it a quarter done? A. Digging the basin down to seven feet at low water, do you mean? No, sir, nor one-thirtieth part done.

Q. Do you know the terms of that contract, that it is to take out the dirt to the miter sill at seventy cents a yard? A. I have understood it was to give seven or eight feet of water in the basin.

Q. To dig down to the miter sill? A. That is seven feet at dead low water.

Q. In your judgment, to complete that contract and dig the mud out down to the miter sill, what proportion of the work is now done? A. This spring?

Q. Any time for five years they have to do it—what proportion? A. I did not understand your previous question. I suppose that what is taken out this spring would not exceed one-thirtieth.

Q. You say so now? A. Yes, sir.

Q. In other words, if this contract is, as you understand it, to take out the mud down to the miter sill, you do not think that Mr. Belden has yet got one-thirtieth of the contract performed? A. No, sir; and perhaps I might double it, but I should rather speak within bounds.

Q. Have you any doubts but what, under that contract to dig down to the miter sill, it will take pretty much all of the whole five years to do the work? A. That depends a good deal on circumstances. If we have freshets, and we usually have more or less, the basin fills up more than at other times.

Q. Would it be an endless contract? A. It would take all the time; I should think they would have to continue dredging to keep it in order.

Q. To dig down to the miter sill? A. Yes, sir; my idea is that there has got to be more yards dug than the engineer has talked about. It is 100,000 yards, is it not? My opinion is, that 100,000 yards will not be one-quarter of the job, including what will naturally be deposited during this time while they are doing it.

That closes the testimony about the Albany basin, contract No. 1. Now we will take another contract that was given out at this same letting, called section 10 of the Erie canal. Auditor Benton testified that the bids for section 10 of the Erie canal were:

Charles H. Spencer,.....	\$38,000
Benjamin Butler,.....	34,000
Adam C. Mowry,.....	29,000
George S. Pratt,.....	38,000
Thomas W. Cheesbrough,.....	32,000
John Davidson,.....	25,000
John Rohback,.....	20,000
Jacob B. Suydam,.....	43,000

Q. Give us the action of the board in reference to that section? A. On the 29th of December:

By Commissioner Alberger:

Resolved, That the proposal of John Davidson to keep in repair superintendent section No. 10 of the Erie Canal, for five years from and including the first day of January, 1867, be and the same is hereby rejected on the ground that the erasures on it are not noted as required by the regulations of this board. Adopted—Engineer Goodsell voting in the negative.

The next proceeding was by Commissioner Alberger:

Resolved, That the proposal of Adam C. Mowry to keep in repair superintendent section No. 10 of the Erie canal for five years, from and including the 1st day of January, 1867, be and the same is hereby rejected, on the ground that the interlineations are not noted as required by the regulations of this board, and also for not having on it the revenue stamps that are required by the regulations of this board. Adopted.

Q. Give us the next action? A. The next action is this:

That the proposal of Thomas W. Cheesbrough, to keep in repair superintendent section No. 10 of the Erie canal for five years, from and including the 1st day of January, 1867, be and the same is hereby rejected, on the ground that there is not on the proposal or bond that accompanied it the revenue stamps that are required by the regulations of this board.

Q. What was the next proceeding? A. By Commissioner Alberger:

Resolved, That the contract for keeping in repair superintendent section No. 10 of the Erie canal for five years, from and including the 1st day of January, 1867, proposals for which were duly advertised for and received at the canal commissioners' office, in the city of Albany, on Friday, December 28th, 1866, until four o'clock p. m. of that day, be and the same is hereby awarded to Benjamin Butler, he being the lowest legal bid-

der therefor, in accordance with the act, chapter 105, Laws of 1857. Adopted—Auditor Benton voting in the negative.

Butler's contract was \$34,000 per year, and the lowest bidder was John Rohback—\$20,000; and I say that in that one bidding on that section the State for five years lost the sum of \$70,000. Now, the testimony before this Senate Committee goes on to show that when the contractors failed to get control of the biddings at Stauwix Hall they succeeded in getting the biddings rejected by their tools, the contracting board, probably by a little *whispering*; and I will take for consideration section 3 of the Champlain canal, in December, 1866. The contracting board, consisting of Benton, Goodsell, Dorn and Bruce, received proposals for the repair of that section for five years. The following were the bidders, and the action of the board is testified to by Auditor Benton:

Charles Vanderkar,.....	\$9,700
Benjamin F. Wells,.....	9,950
Ryal G. Briggs,.....	17,550
Shelden G. Pratt,.....	18,000
Francis Kidder,.....	19,969
William O'Neal, Jr.,.....	24,900
Miles T. Ferris,.....	30,000

Q. State what was the first action had by the contracting board in reference to the awarding of the contracts upon these bids? A. The first is in the proceedings of December 29th, 1866, as follows:

Resolved, That the keeping in repair of superintendent section No. 3 of the Champlain canal for five years, from and including the 1st day of January, 1867, proposals for which were duly advertised for and received at the canal commissioner's office, in the city of Albany, on Friday, December 28th, 1866, until four o'clock p. m. of that day, be and the same is hereby awarded to Charles Vanderkar, he being the lowest legal bidder therefor, in accordance with the act, chap. 105, Laws of 1867.

That was the first action; that was upon the resolution offered by Engineer Goodsell; then occurs the following:

It will be seen that this Vanderkar's bid—\$9,700—was the lowest.

Commissioner Dorn offered the following as an amendment to the resolution:

"That the proposal of Charles Vanderkar to keep in repair superintendent section No. 3, Champlain canal, for five years, from and including the first day of January, 1867, be rejected on the ground that the words 'five' and 'principal' are written over an erasure, and not noted as required by the regulations of this board, and that there are interlineations in the bond that accompanied said proposal that are not noted as required by the regulations of this board."

On calling the ayes and noes, the amendment was lost by the following vote:

Ayes—Messrs. Alberger and Dorn—2.

Noes—Messrs. Benton, Goodsell and Bruce—3.

The vote was taken on the original resolution, and it was carried.

That was the first proceeding.

Q. Now will you produce the proposal of Van-

derkar and point out the erasures which are contained therein to the best of your knowledge, which the resolution calls for? A. Here is the first one [pointing to the word "five" on the fourth line from the top, and the word "principal" on the fourth line from the bottom]; the proposal of Vanderkar just produced, was marked "No. 2, C. S."

Q. Will you refer to the imperfections in the bond to which the resolution refers, to the best of your knowledge? A. The interlineation in the bond is in the acknowledgment—in the third line; the word "severally."

Q. What was the next action of the board in reference to this contract? A. On the 31st of December, Mr. Dorn introduced the following resolution:

Resolved, That the resolution of this board on the 29th inst., awarding to Charles Vanderkar the contract to keep in repair superintendent section No. 3 of the Champlain canal for five years, from and including the first day of January, 1867, be and the same is reconsidered. Adopted.

Commissioner Bruce not being present.

Commissioner Bruce having arrived, Mr. Dorn introduced the following:

Resolved, That the proposal of Charles Vanderkar, to keep in repair superintendent section No. 3 of the Champlain canal for five years, from and including January, 1867, be and the same is hereby rejected, on the ground that the erasures on the proposals, and the interlineations on the bond are not noted, as required by the regulations of this board.

On calling the ayes and noes, the resolution was adopted by the following vote:

Ayes—Messrs. Benton, Alberger and Dorn.

Noes—Messrs. Bruce and Goodsell.

Q. What was the further action of the board in reference to that? A. The same date, by Commissioner Dorn:

Resolved, That the proposal of Benjamin F. Wells, to keep in repair superintendent section No. 3 of the Champlain canal for five years, from and including the first day of January, 1867, be and is hereby rejected on the ground that the erasures on it are not noted as required by the regulations of this board.

On calling the ayes and noes the resolution was adopted by the following vote:

Ayes—Messrs. Dorn, Alberger and Benton—3.

Noes—Messrs. Bruce and Goodsell—2.

Q. Will you take the proposal of Mr. Wells, and point out the erasures to which the resolution refers, to the best of your knowledge. A. I don't know as I can—I don't see anything noted in the resolution. [Takes the proposal of Wells.] There is an erasure of "five" on the proposal, the fourth line from the top.

Q. Was there any other informality in the Wells paper to your knowledge, except the one you have just referred to? A. I do not recollect any.

Q. Do you know whether or not that "five" was erased when the bids were opened? A. Yes, sir.

Q. Was it or not? A. It was erased when it was opened.

Q. At the time of opening the bids, was it

erased as it now appears? A. I recollect opening it myself; I opened all the bids.

Q. Do you recollect the fact that at the time the bid was opened, that "five" was erased as it is now? A. I believe that I should get at your question if you would let me tell you how the process is.

Q. I prefer a direct answer to the question. Do you recollect the fact that at the time the bids were unsealed and opened, the word "five" was erased as it now appears? A. I did not examine it.

Q. Has it now the appearance of an erasure of a material word without substituting any other? A. I take it that it has.

Q. Has it the appearance of an erasure in ink of a different color from that which is used on the balance of the paper? A. Yes, sir.

Q. Have you any knowledge as to when that erasure was made, or how? A. No, sir.

Q. Or by whom? A. No, sir.

Q. Or the purpose of it? A. No, sir.

Q. Have you any information on the subject? A. No, sir.

Q. Do you know what induced the change in the vote upon the bid of Vanderkar between the 29th and 31st of December? A. I don't know any other than my own.

Q. State your own? A. I was convinced that when I first voted I was wrong.

Q. Did you understand there was any ambiguity about those papers? A. Mr. Smith, you will not let me tell the story as it is, and therefore, I shall decline to answer any questions of that sort.

Q. Did you understand there was any ambiguity about the paper? A. What do you mean?

Q. That induced this change in the vote? A. I do not understand your question.

Q. Was there any conviction produced upon your mind, that there was any uncertainty about the purport or meaning of that paper, which produced a change in the vote? A. I cannot answer for anybody except for myself.

Q. In the interim between the action upon this bid—between Saturday and Monday, were there persons other than members of the contracting board, participating in the discussion and negotiations in reference to the awarding of the contract? A. Not that I know of; I never had any conversation ever since I have been a member of the contracting board, with any individual in relation to contracts, either bidders or otherwise, or even members out of the room.

Q. You may now go on and make any explanation you desire in reference to the transaction? A. All I wanted to say is this: that when the bids are unsealed and opened they are opened and read publicly, and they are then handed to the clerk to file.

Q. What do you mean by publicly opened? Is anybody present besides the members? A. Yes, sir, the room is full, and there is a public declaration of who the bidders are and what prices they bid; they are then handed to the clerk to file after the bids are opened, and a table of them prepared as in this book; we ascertain who is the lowest bidder and take up that bid and examine it; if it is formal and correct as we suppose, the

award is made upon that bid; if it is imperfect that bid is rejected, and the next highest is taken up and examined.

Q. Was there any informality in the Wells bids or papers other than you have referred to, to your knowledge? A. I have no recollection of any.

Q. What was the next action of the board in reference to this section? A. The next resolution is of the same date I believe. Mr. Dorn offered the following resolution:

Resolved; That the contract to keep in repair superintendent section No. 3 of the Champlain canal for five years, from and including the first day of January, 1867, proposals for which were duly advertised for and received at the canal commissioners' office, in the city of Albany, on Friday, December 28, 1866, until four o'clock, P. M., of that day, be and the same is hereby awarded to Ryal G. Briggs, he being the lowest legal bidder therefor in accordance with the act, chap. 109, Laws of 1857.

On calling the ayes and noes, the resolution was adopted by the following vote:

Ayes—Messrs. Benton, Alberger and Dorn.

Noes—Messrs. Bruce and Goodsell.

The bid that was rejected was \$9,700. The award was made to Royal G. Briggs one of the ring for \$17,550 for five years making a loss to the State of between \$35,000 and \$40,000 on that one contract alone. Now, in reference to this alleged erasure, Vanderkar the bidder, gives his testimony as follows: He says that he resided at Waterford, that he was a foreman on the canal; he made the proposition and executed the bonds and signed them:

Mr. AXTELL—I would like to ask the gentleman a question if he will give way. Is the gentleman reading from document No. 40 of this Convention?

Mr. BARNARD—I am reading from the large document.

Mr. AXTELL—I rise to a question of order. Inasmuch as every member of this Convention is supposed to be capable of reading, it is not in order for a member to read at length a document already officially in possession of the Convention.

The CHAIRMAN—The Chair does not think the point of order, well taken. The gentleman will proceed.

Mr. BARNARD—To save the gentleman some trouble, I will say I had pretty nearly got through with these extracts.

Q. What did you do with them after they were prepared? A. I sent them to Albany; I did not send them myself, but I left them in the hands of another person to send down.

Q. Did you make a deposit of money? A. I had a certificate of deposit in the bank. I got a certificate, I think it was for \$4,000.

Q. A certificate of deposit to the credit of the auditor? A. Yes, sir.

Q. What was the next thing that occurred after you sent the papers to Albany? A. The next I heard was that the contract was awarded to me.

Q. Who did you hear that from? A. I heard it from somebody who was down from our place, and who came up there. I cannot state exactly

who the person was that I heard it from, but I heard it from several. It was a common report around that I had it.

Q. What next came to your knowledge in relation to it after you heard it noised about? A. The next thing I heard was that I was to come down and enter into the contract.

Q. Did you come? A. I came down on the 2d day of January. Then again after I heard it was awarded to me, I heard that they had pulled it back.

Q. On the 2d day of January you came to Albany? A. Yes, sir.

Q. Where did you go? A. I went to the canal board.

Q. What took place there? A. I went in there and asked about the letting.

Q. Who did you ask? A. Mr. Dorn; Mr. Dorn was there.

Q. Canal commissioner? A. Yes, sir; Mr. Dorn and the auditor, Mr. Benton; I think Mr. Alberger was there; I am not positive about the new canal commissioner, for I do not know him; Mr. Bruce was not there.

Q. Were they all present when you asked? A. When I first went in I asked about the bids.

Q. Were they all present then? A. Yes, sir.

Q. What did you ask? A. I asked how many bids there were for this section, and which was the lowest bid.

Q. What was said? A. I went in and asked Mr. Dorn; I said, I think, this; I spoke to him and said, "Who is the lowest bidder on this work?" he said "The lowest bidder was a man named Charles Vanderkar, and I suppose that is you;" I asked him, "Who is the next lowest?" and he said "I think it is Mr. Johnson's bid;" I asked who it was awarded to, and they said Mr. Johnson; then I asked if I could see the papers—that is, the proposals.

Q. Asked who? A. I asked the whole of the gentlemen there. Mr. Benton, the auditor, ordered the clerk to show me the papers. He showed them to me and I looked at them. Mr. C. A. Waldron was with me; he is the surrogate of our town, and I asked where the difficulty was and he showed me the difficulty.

Q. Who showed you? A. The clerk of the board.

Q. What was his name? A. The gentleman who was here.

Q. Mr. Ackley? A. That is the man. He showed me a deficiency in it. [After looking.] I do not see it here, but there was some deficiency that he showed me at that time. I don't see where the deficiency was. I did not take particular notice of it myself, but Mr. Waldron looked at it where he said it was erased—where it was scratched.

Q. What did he say about it? A. That was all he said. Then I asked if it was awarded, and he said it was.

Q. Go on. A. After he showed me the deficiency in these papers, Mr. Dorn went out of the room, and I walked out into the hall, and I said to Mr. Dorn—in the first place I was a little excited. I did not feel very well pleased at the matter. I asked him if my bid was not the lowest bid—I think that was what I asked him. I

asked him if it had not been awarded, and he said it had. I asked him why it had been recalled, and if the contract was not mine. He said that it was by reason of an informality, or something like that. He said it was scratched. Then Waldron commenced talking with him, and asked him whereabouts it was. I cannot really state the words that Waldron used with him at that time, but he turned round and said, "you would not take the contract!" I said, "I will take the contract and I am here to enter into it." He said, "you cannot have it; your bid is informal; the board would not let you have it." Then I spoke up and said, "there is no chance for a man here who has not got money"—that was what I said. I said, "Willard Johnson has got money, and he runs the Champlain canal now." These were the words which I used with Mr. Dorn.

Q. Did anything further take place about it, so far as you know? A. Nothing further.

Q. Who filled out that proposition? A. Mr. Cornelius A. Waldron.

Q. So far as you know, is it in the same condition here that it was when it was filled out and signed? A. As far as I know. Let me just look over it once more. [Looking at it.] It is, so far as I know.

Q. Who filled out the bond? A. Mr. Waldron filled it out.

Q. So far as you know, is that in the same condition as it was when you signed it? A. It is, so far as I know.

Q. Is there any alteration or erasures in any of these papers that you know of? A. Not that I know of.

Q. Hold that proposition up to the light. [The witness holds the paper up to the light.] Can you now see the point that Mr. Ackley called your attention to? A. I see at the end of the word Waterford— Yes, sir.

Q. In the date? A. The name of the post-office.

Q. Is it under the word Waterford in that date? Yes, sir, right there.

Q. Look at the word *five*, above. A. Yes, sir, I see it.

Q. Did he call your attention to that? A. I don't know but that is what he called my attention to at the time.

Q. Have you heard anything about this matter since? A. Nothing but outside talk.

Q. From whom? A. From all the people talking about the question. I have heard it talked about.

Q. From anybody who pretended to know anything about it? A. No more than I heard Mr. Waldron say about it.

Q. Is he here? A. Yes sir.

By Mr. Millsbaugh:

Q. When were you told the award was made to you—before the first of January? A. Yes, sir. I think it was on Saturday.

Q. Before the first of January? A. I think Saturday was the 29th, was it not? I think it was the 29th that I heard it.

Now, Mr. Waldron, the one who drew up these papers, testified as follows:

Cornelius A. Waldron, being duly sworn, testified as follows:

Q. Where do you reside? A. Waterford, Saratoga county.

Q. What is your occupation? A. I am an attorney and counselor-at-law, and am surrogate of the county.

Q. Do you know Charles Vanderkar? A. Yes, sir.

Q. Did you make out a proposal for section 3 of the Champlain canal for Mr. Vanderkar? A. I did; the proposition and the bond.

Q. State to the committee what you did, and what you know of the matter? A. I made out a proposal and delivered it to Mr. Vanderkar. He took it from my office. The letting was to be awarded, I believe, upon the 29th of December. I was informed, by rumor, that the contract was awarded to him on the 29th. Then I was told, by rumor, that the board, on the 31st, had reconsidered the award, and had awarded it to Mr. Johnson. The story then came that the bid was cut to pieces, and I had a little curiosity to know wherein it was cut, and I went down to the canal board on the 3d day of January—the canal commissioners' office—and went in with Mr. Vanderkar. I asked the clerk of the contracting board—the man I met on the stairs.

Q. Mr. Ackley? A. Ackley, that is it; I asked him to see the bid, and he said that he would let me see it by and bye; I asked him what they objected to it for, and he said it was cut up; I said I didn't see how that was; that was news to me.

Q. Do you recognize this as the proposal [producing it]? A. Yes, sir; that is the proposal and this is the bond.

Q. Go on and state the facts. A. I was sitting there waiting; Mr. Vanderkar sat down on a chair, and the contracting board were sitting there waiting for Mr. Hayt; they made a remark finding fault because he did not come.

Q. Who were present? A. Mr. Dorn, Mr. Alberger, the auditor, the clerk of the board, and some others whom I don't remember; I did not pay much attention to them because I was there with reference to seeing the paper; I asked the clerk to let me see the bid; the auditor said "the clerk will show it," and he accordingly went to the safe and took out the papers and handed them to me. I saw the word "awarded" on it, and I then said "where is it cut?" he said "there," pointing to the word "five;" I said "I remember very distinctly that on the letters *we* there was a little too much ink, and I scratched the ink off;" I said, "where else is it cut up; the 'five' could not mean either fifteen or fifty years, and there was nothing there to have raised any doubt; there was a little too much ink on;" then he referred to the bond, and pointed to the word "severally" interlined in the bond; I said that is no alteration; it only made the bond stronger; he said that that was unnecessary, because it was "we acknowledge;" I being somewhat of a lawyer, and knowing that a note with "we promise to pay," putting in the words "we severally promise to pay" as I thought, made it stronger, and I put in the word "severally" in the bond; those were the objections that he made and none other.

Q. Who was it that made the objection? A.

That was the clerk of the board; that was the only objection made in the board; Mr. Dorn went in the hall with Mr. Jenne, one of the engineers; Mr. Vanderkar passed out with them, and said, "Was not my bid the lowest?" he said, "Yes, your bid was the lowest, but the board will not give you the work, because your bid is illegal," I think was the expression. I said, "What is there illegal about it?" He said, "it is cut." I said, "Wherein?" He said it was cut at those places. I said if there was any advantage to be taken of it, it would be by Vanderkar, who is willing to enter into the contract. He said, "it is illegal." I said, "suppose the blot had been left on?" He said it would have been illegal then. I said that with the blot off or the blot on it was the same thing. He said the board will not let him have it any way; he said, "you don't want the work." Mr. Vanderkar said, "I do, and I am ready and willing to enter into the contract." That was the substance of what passed between them; then I made a remark, saying, "Charlie, there is no use of your talking; you are not in the ring; we may as well go off;" and then we went into the circle of the building; then in a few minutes a card came out, stating that the contracting board was in session, and we went away; I saw Mr. Hayt and Mr. Dorn go in, when the contractors secured a postponement of the biddings from 12 to 4 o'clock.

Vanderkar's bid had been given to the board, and was in the charge of Nathan Ackley, their clerk. The contractors were very anxious to get that bid out. To do this, it was proposed to give \$500 to any person who would go to the clerk and personate Vanderkar, and get permission to withdraw the bid. No one seemed to be willing to personate him, but an attempt was made to get at the bid in another way.

Mr. Ackley says:

Q. State what just did occur? A. After the board adjourned, then the question arose there among some of the bidders I presume, or it was asked if they could have their bids back which they had put in; the members of the board were all sitting around the table there; they agreed that they might have them back, and that I should give them back; I protested very strongly against it, so much so, that they rather made fun of me; they said I was too nice and excited on the subject; I protested against it from the fact that I thought it would lead them into difficulty.

Q. Then what did the board do? A. They finally ordered me to deliver them up.

Q. Who did? A. I think they all consented to it. I think they did. I will not be certain; but it is my recollection there was no dissenting voice. It was not done in the form of a resolution, because the board had adjourned.

Q. They were all there? A. I think they were all there; that is my impression.

Q. You don't remember any dissent, and your recollection is that they assented to the bids being withdrawn? A. Yes, sir.

Q. You yielded? A. I yielded, but protested very strongly.

Q. Were the bids all withdrawn then? A. I think they were all withdrawn but one. I think one was left.

Q. How many were taken back? A. I think there were only four or five bids; there may have been five or six in.

Q. There were from four to six? A. Yes, sir; somewhere along there.

Q. Do you know whose bid was left in? A. Yes, sir; I know it, because it was the first bid that was received; it was handed in the day before, and I marked it number one.

Q. Whose was it? A. It was Charles Vanderkar's bid.

Q. They were all withdrawn but Vanderkar's? A. Yes, sir.

Q. That remained in? A. Yes, sir."

The bid of Ryal G. Briggs was assigned to one of the ring, in pursuance of the action at Stanwix Hall. The story of that assignment by Briggs is well worth referring to.

Ryal G. Briggs examined.

By Mr. Smith:

Q. Where do you reside? A. I reside in Phoenix, Oswego county.

Q. What is your age and occupation? A. I have been jobbing some for the last two years.

Q. Had you any other business? A. No, sir.

Q. What was your business before that? A. I had charge of public works and sections for contractors.

Q. Do you know a man named Stevens, a lawyer, residing in Fulton? A. Yes, sir.

Q. Did you get him to fill out some blank proposals for you last December? A. Yes, sir; I think it was in December.

Q. How many? A. Two, I think; two or three; I guess two; one for the Cayuga and Seneca canal, and one for section 3 Champlain canal.

Q. Was the contract awarded to you for section 3 Champlain canal? A. Yes, sir.

Q. Had you assigned it before it was awarded to you? A. No, sir; I think it was awarded on the 29th.

Q. Had you procured the consent of your sureties to the assignment before it was awarded to you? A. No, sir.

Q. Are you sure about that? A. I am.

Q. Who was the bidder next below you for that section? A. I don't know; I was not here at the letting.

Q. Do you know a man by the name of Johnson? A. Willard Johnson; yes, sir.

Q. Who brought your proposal to Albany? A. Mr. Case brought mine.

Q. What Case? A. Charles E. Case.

Q. Was the amount filled in when he left your place? A. No, sir.

Q. Who filled in the amount? A. I suppose he did; I do not know.

Q. Did you give him authority to insert the amount? A. I did; I gave him my proposal on a slip of paper; I had to get home to Phoenix that night.

Q. How did you ascertain that the contract had been awarded to you? A. I think I got a telegram.

Q. From whom? A. I think it was Johnson, or else he sent me word that it was awarded to me.

Q. Who sent you word? A. Johnson.

Q. What had Johnson to do with it? A. He wanted to buy it.

Q. What did he telegraph you; state the substance of it as near as you can? A. I am not certain that he did telegraph me, but I thought he did when you first asked me; I think now that he sent word to me that section 3 Champlain canal was awarded to me, and he wanted to see me at Fulton, and I went down the next day.

Q. What day was that? A. I think it was the 2d of January?

Q. Who did you see there? A. I saw Mr. Johnson.

Q. What took place between you and him there? A. I saw him in the office.

Q. What office? A. Stevens' office.

Q. What took place there then? I want a full and truthful account of the conversation. A. We did not have a great deal of conversation; I sold him this contract.

Q. What was said between you? A. I do not know as I recollect the conversation.

Q. State what you do recollect. A. I think he asked me how much I wanted for the section down here, and I told him that it was work that I was not very much used to do; repair contracting; that they had got so stringent with repair contractors, that I was a little afraid to take hold of it, and I would rather sell out than keep it.

Q. You did not want it? A. No, sir; I would rather get something out of it than to keep it.

Q. What then? A. Then I sold it to him.

Q. You had more talk than that—two canal men getting together? A. I presume we did, but I do not recollect what the conversation was.

Q. Give the substance of it? A. I have done that; I have given the substance of the conversation I had with him.

Q. Was nothing said about the price? A. Yes, sir.

Q. Tell that? A. He gave me \$262.50.

Q. How did you get at the odd dollars and cents? A. I think we differed a little.

Q. What then; did he pay you? A. Yes, sir.

Q. How did you get at the price you bid for this contract? A. I don't know as I could tell you any more than I told him. I wanted to sell it, and he wanted to buy it.

Q. I mean the price you bid—how did you get at that \$17,750? A. I did not get at it at all. I did not put it in.

Q. You furnished it to Case on a piece of paper to save time? A. Yes, sir.

Q. How did you get at it? A. Understand me—I do not swear that I put just that amount there, \$17,000.

Q. Did you give Case the amount which you proposed to bid for that contract, section 3 Champlain canal? A. Yes, sir.

Q. What was the amount? A. I cannot recollect, but it was not \$17,000.

Q. How much was it? A. I think it was about \$16,000—not far from that.

Q. Then you never authorized this amount to be put in here? A. I gave him liberty to change it as he pleased.

Q. To put in any amount he pleased? A. I gave him liberty when he brought the papers

down to change it, and make it lower or higher, just as he thought best.

Q. You gave him liberty to change the amount? A. Yes, sir.

Q. How did you get at the amount you gave to Case on the piece of paper? A. That was my judgment, what I thought such a section could be kept in repair for.

Q. Have you been on it? A. I was on it once last summer.

Q. You were? A. I went over it to look at some work near Fort Edward.

Q. How did you go over it? A. I went over it with a horse and buggy.

Q. Where did you ride—on the highway? A. On the tow-path most of the way.

Q. Over the whole section? A. I don't know as I went over section 3.

Q. That is just what I asked you. A. I don't know as I went over it.

Q. Have you any present recollection of ever having seen an inch of section 3 Champlain canal? A. I could not swear that I have.

Q. How did you get at the amount? A. I had a description.

Q. But you never saw it to your recollection; how did you get at the amount? A. I believe they generally have something that tells a man what is to be done.

Q. What had you? A. I had a paper which tells what was to be done.

Q. An advertisement? A. Yes, sir.

Q. You judged from the advertisement? A. Yes, sir.

Q. Not from any consultation with others? A. No, sir.

Q. Explain how you came to conceive the idea of bidding for section 3 Champlain canal, which you had never seen. A. I don't know as I can explain how I conceived the idea.

Q. What gave rise to it in your mind? A. I had put in some bids before for different jobs, and had never got any of them except one; I got one—that was the stone dam at Phoenix.

Q. How much did you deposit? A. \$4,000.

Q. Did you in fact deposit a cent? A. No, sir, I did not.

Q. What did you have? A. Mr. Case got the deposit.

Q. He got what? A. A certificate of deposit.

Q. For \$4,000? A. Yes, sir.

Q. From whom? A. I think from his brother, S. F. Case.

Q. What is he? A. He is president of the bank in Fulton."

Now it appears there was an assignment. Although this contract, on the 29th of December, was awarded to Mr. Vanderkar, it was not until the 31st of December that it was reconsidered and the contract awarded to this Ryal G. Briggs. On the 29th of December Ryal G. Briggs says he had sold his contract and made an assignment of it to Mr. Johnson or his partner, and an acknowledgment was taken by one of the clerks at the auditor's department, bearing date on the 29th of December. They did not succeed in getting Vanderkar's bid out of the way as they intended, and so they were willing to give five hundred dollars

more owing to the honesty of the clerk of Auditor Benton—Mr. Ackley, and here is what Bangs testified:

Q. What did Ackley do? A. He said it was not his bid, and would not give it up. Then we went down and canvassed again, to see how to get it out; we wanted to find out some body that Ackley did not know. Willard Johnson told me if I would go up there and represent Vanderkar, he would give me \$500.

Q. Willard Johnson told you if you would go up there and pretend your name was Vanderkar, and withdraw that bid he would give you \$500? A. Yes, sir; and I would not do it.

Q. That was the reason that Vanderkar's bid was not got out? A. Yes; whoever bid off these sections, we handed over all our papers to him. For instance, Mr. Tom Gale bid off No. 1, and we handed over all our papers in number one to him; and the understanding was, that he was to make them all informal, or fix the work at his own price, and they were to pay us the money or check the moment these contracts were awarded, and these checks were to be satisfactory, that is, were to be endorsed if they were not satisfactory—good checks, that the president and all of us said were good. Well, the contracts were awarded, and we had an understanding; met at the Delavan House, and Jarv. Lord had his partner there; he said his man would draw his checks; his name is Mudgett; he drew the checks for Lord, and Tom. Gale signed his own checks himself, and Belden and Dennison gave theirs.

Q. Did Johnson give any? A. Yes, I had his check; he gave me his check.

Q. It was understood that section 3, of the Champlain canal, went to Johnson? A. Yes.

Q. And did Johnson give his own check for what that was sold for? A. Yes, sir.

Q. And the only reason that Vanderkar's bid did not get out was through the honesty of the clerk? A. Yes, I think so; it was understood there we could not reach Mr. Ackley, that he could not be reached.

Q. You believe that Mr. Ackley was an honest man? A. Yes, sir; it was understood among the contractors that he could not be reached.

Q. Was it talked of there among the contractors that Ackley was upright and beyond being reached by corrupt means? A. Yes.

Q. And in consequence of his integrity, the contractors failed to get Vanderkar's bid out? A. Yes, sir; that was talked up among the contractors there that we could not reach him; that it had been done on the blind.

Q. Got by cheating him? A. Yes, sir.

It is certainly cheering that amidst all the corruption, all the inattention on the part of the officers connected with the canals to their true duty that there is one man referred to here in the testimony, this Mr. Ackley, that could not be ruled in any way through the corrupt influences of this canal ring. I do not know what has been done with Mr. Ackley; I do not know what is yet in store for him; I probably may show you in the course of this argument what has been in store for other officers of the canal board when they have dared to do their duty faithfully to the State.

They have been complained of. They have been sneered at, and they have been finally removed from office. Mr. Ackley however, yet remains, I believe, and whatever may be said of the others we can certainly say of him that he is an "honest man, the noblest work of God." Although the contractors were not successful in getting this bid of Vanderkar's, but probably with the design of having an alteration made in it as they did in others, they seemed to have had better success with Ackley's superiors and I shall see what they say on this subject taking Mr. Benton first:

Q. I will ask your opinion as a lawyer, whether putting the word "severally" into the acknowledgment of that bond, in your judgment, in any manner affected that bond? A. I don't think it did, as a lawyer.

Q. Or as a man? A. No.

Q. The word "five" being plainly written in the proposal, do you believe the party could be held for five years upon that language? A. Do you ask my opinion as a lawyer?

Q. Yes; in the first place you voted to give the contract to Vanderkar because he was the lowest bidder? A. Yes, sir.

Q. Then you changed your vote. You voted to rescind, and voted to reject Vanderkar's bid after voting for it? A. I voted to reject it on the ground that "five" was an erasure.

Q. Why did you vote for it at the start? A. Because it was not called to my attention.

Q. If you had not changed your vote, Vanderkar would still have held the contract? A. That is so, from the record."

Mr. Bruce was permitted to give his explanation:

"Q. The words "five years" to the contract, it was claimed, had been over something? A. I think there was something about that, but I don't recollect; I remember there was something that was thought to be informal.

Q. Do you now remember whether it was awarded to Vanderkar at that time or not? A. I do not.

Q. Do you think that a bid should be rejected for having the word "severally" written in the acknowledgment, when the bond is perfect itself; in other words, where the bond is perfect and complete and in the acknowledgment on the back side of the bond the printed form reads "We acknowledge," and the word "severally" is written in, making it "We severally acknowledge"? A. I should not think it would vitiate the bond under the published requirements of the board.

Q. Do you think it should be rejected on that ground? A. I do not, sir."

Mr. Alberger was permitted to make his explanation:

"Q. Is there anything there scratched that is injurious to the validity of this contract? A. I don't know it now.

Q. Look at the bond. Is there anything on that bond which is defective for which you voted to reject it? The resolution says "the interlineations on the bond are not noted." Have you now the bond in your hand? A. I don't know.

Q. You believe that paper, No. 3 to be the bond? A. I do.

Q. What do you say as to the bond, why you voted against awarding that work to Vanderkar? A. My recollection is pretty distinct.

Q. Is there anything in the bond that you think injured it? A. I don't think there is anything that would make it invalid.

Mr. Goodsell gave his testimony, that he was a civil engineer and a member of the contracting board.

Q. You voted to award the contract to Mr. Vanderkar because you considered it the lowest legal bid? A. Yes, sir. [After reading further of the reconsideration of the award to Mr. Vanderkar.] I voted against taking it from Mr. Vanderkar and awarding it to Mr. Briggs all through, though the ayes and nays do not seem at all times to appear.

Q. Give us your reason for voting as you did on that resolution? A. I thought the man was entitled to the work, being the lowest bidder, that there seemed to be no erasure whereby there could be a possible mistake in making the contract, or in construing the bid, and that it was for the interest of the State that the work should go to the lowest bidder.

A very sensible reason.

Q. Look at paper No. 4, Mr. Wells' bid? A. I see some erasures.

Q. Explain fully the reasons for giving your vote in reference to that. A. My theory of this law is, that the Legislature intended that the State should have the benefit of competition at these lettings, and that the work should be awarded to the lowest bidder unless there was some serious informality; that is, the bond was imperfect, or something of the kind. I acted in accordance with that theory.

Q. Your opinion is, that this rule, established by the contracting board, should only operate to protect the State? A. I think so.

Q. Did Mr. Auditor Benton agree to agree by you in reference to your vote in that matter? A. I certainly understood him so the day before.

Q. He urged you to take that stand? A. Yes, sir; I thought it was the only safe position.

Now, sir, there was a great deal of testimony given on a variety of matters, but in other respects the contractors had so much control over or influence with the canal commissioners as to pay no regard to the order of subordinates as to their work; and I have the testimony of James H. Sherrill, who had an official position connected with the Champlain canal—that of a superintendent.

Q. Until the 1st of June last have you had an official position connected with the Champlain canal? A. Yes, sir; I had an official position barely. I was going up and down, and had much to say, but what I did say didn't amount to anything.

Q. What was that position? A. Superintendent.

Q. State the extent of your authority for the past few years over the contractors of the canal. A. I supposed that my authority was almost unlimited until I came to test it.

Q. Upon whom did you test it? A. Upon some of the contractors.

Q. Do you remember what contractors? A. I think it was Belden & Co.

Q. For not doing what? A. I think that the navigation was not going on properly in regard to lock-tending.

Q. When was that? A. That must have been two or three years ago.

Q. What did you do? A. I put on some extra lock-tenders; I ordered them on.

Q. Where was that? A. At Whitehall.

Q. How many had they on? A. They had on three.

Q. For all the locks? A. Yes.

Q. How many more did you order? A. An extra one for each, sufficient to facilitate getting the crowd of boats through.

Q. You were satisfied that they had not on a sufficient number for that purpose, and you notified the contractors? A. Yes.

Q. They did not put them on? A. No.

Q. Then you put them on? A. Yes.

Q. What was done about that? A. I supposed I had a right to, and supposed it was my duty to do it; and I submitted the question to the auditor, and he said the contractors must pay for their own lock-tenders and everything.

Q. What was the result? A. The result was, that that was where the matter dropped with me. I did not hire any more after that.

Q. They dismissed those you hired, and the contractors did not pay them? A. I don't know about that. They came to me and presented a bill, and it amounted to considerable. I told them the auditor said all that expense must come out of the men who contracted to attend to the lock, and he could not do anything about it, and they must go to the contractor and get it.

Q. How long was it that they came to you with that bill unpaid? A. It was soon after the time.

Q. Soon after the time you put them on? A. Yes, sir; the result was, I found the superintendent hadn't much to do as a general thing.

Q. Who discharged the men you put on? A. I guess they discharged themselves; they could not get their pay.

Q. The contractors would not pay them? A. No, sir.

Q. Was there any public authority to enforce the payment? A. No, sir.

Q. Were the facts reported by you to any public authority? A. No, sir; the whole matter dropped there.

Q. Did you report the facts to your superior? A. I reported the facts because I made some noise about it, and was called upon soon afterward and frequently afterward, why don't you have some more lock-tenders? Where there was a jam, says I, I can't put them on, for there is no one to pay them unless the auditor will insist upon these men paying them, because they will say they have hired all they agreed to hire, and all the contract required.

Q. The men you put on there could not get their pay, and the canal authorities could not compel them to pay? A. That has been the way. It has been a complete jumble for the last four years.

Q. Have you attempted to compel anything in

any other way? A. I have always tried to; I have gone to them frequently when there was trouble along, and told them this thing must be done.

Q. You have pointed out things that ought to be done? A. Always.

Q. What would the contractor say? A. I will go and do it.

Q. Would he? A. No, I would have to go three or four times before I could get him to do it. Here is an instance, right up here. The contractor by rights should clean out the ditches running from the canal. Under Mr. Skinner the ditch was utterly filled up. He told me to go on and make an estimate for it, and have it cleaned out. I did so, and that was paid.

Q. Paid by whom? A. By the State. Afterward they built this lock here. Then they had to open this ditch again. That was utterly overflowing the main land. He was all the while claiming damages, and got one or two bills through for the purpose of paying his damages, and I was told afterward that has been usually paid by the State, when the ditch has been filled up. The man was complaining to me—I think it was two years ago, under Belden—and he said to me, 'I am going to have these men go right on and fill it up.' This was along, perhaps, in September. It ran along and ran along, and the man came to me and says, 'The fall rains are coming pretty soon, and I want that filled up.' And finally it ran along and ran along until he sold out his contract, and never attended to it at all. All that kind of dilly-dally business was going on.

Q. Has that been a common thing among contractors? A. It is a common thing that a contractor will not do his duty if he can help it.

Q. What power is there to make him? Has the superintendent any? A. Not where there are men over him.

Q. It is in the superiors of the superintendent? A. Yes, sir.

Q. You say, "Not where there are men over him?" A. I cannot say I know anything about it, but where a man has a strong influence in Albany, and especially among the inside "ring" there, it is a pretty hard matter to get him to do right. It is a pretty hard matter I tell you. I have suffered here a great deal and my own friends and neighbors have suffered, while I was superintendent; and if I could not help them—

Q. You did the best you could to help them, and failed? A. Yes, sir.

Q. What was your failure attributable to? A. I attributed it to the system, and the system as governed by the circumstances.

Q. In your opinion, is the canal in as good a condition to-day as it was when the State gave it up to the contractors, with all the appropriations which have been expended or professed to be expended upon it? A. I should want to divide the question. So far as the building of a dam, or a good lock is concerned, that dam is actually built, and consequently must be better. So far as the enlargement has gone, and the bridges and abutments have been constructed, it is better. So far as the prism of the canal is concerned, if they have taken out any earth *bona fide*, it is better. But what they have done upon

the canal and tow-path with the expenditures of money that have been made, has not, in my opinion, been over one-third what it ought to be.

Q. Has over one-third of the appropriations of the State been actually expended, in your judgment, in good faith? A. I don't think over one-third has been, any way.

Q. Would one-third of the money, properly expended, have produced as great a result as they have produced? A. I think so; but I don't know but I may be mistaken about it. That is a matter of opinion; if these constructions are properly built, and the inspectors do their duty, whatever constructions are put up, ought to be first class. But I have known some that were not; last spring the men put up new structures and got their pay for them; but I guess one of them is pretty near in the canal now, cracked off.

Q. What one is that? A. The bridge abutment on the Whitehall level—the five mile level.

Q. Which bridge is it? A. I forget which one.

Q. Put in by Belden? A. Yes, sir.

Q. For the last two or three years has there been an entire failure on the part of contractors to live up to their contract, and to do their duty under it upon this canal? A. I think not only a failure, but I think some of them have been determined not to do.

Q. Has there been a substantial failure to live up to their contract? A. Yes, sir, and a determination; as an instance, on the feeder a year ago last spring; I knew we had rotten constructions on that feeder, and unless proper repairs were put on they could not stay there, and I called Mr. Belden's attention to it; it is a sluice round a lock, on one of the main feeders of the Champlain canal; they are very bad constructions; there was one sluice, in fact—four or five of them—very bad; there was one in particular went round the Barneyane lock; I called the attention of Mr. Belden to that early; said I, "I don't think that structure will stay there, and it must be fixed; I want to have you promise me you will have it done;" says he, "I will see McFarland, and I will have McFarland do it;" it kept lingering along, and finally I called attention to it again; says I, "Mac, that structure will not stay there three days after navigation commences, and a few dollars will save it; there is a press for navigation, and I don't want to see navigation interrupted here; will you attend to it?" he said he would; it lingered until the commissioner came here; I called Mr. Dorn's attention to it, and I told him, "Dorn, for the salvation of your reputation and mine I don't want any breaks here, if it can be helped; now I want you to impress upon these men the necessity of fixing this, as well as the others, this one in particular, the others generally; now," says I, "they act to me as if they meant to let that go until it is too late; I want to have it done." Mr. Dorn done all he could; he called on McFarland in my presence—the same as calling on Belden—and said, "Here is a bad thing, and Sherrill thinks it won't stand; will you pledge me your word and honor that you will go on and put that right? I don't want the responsibility of letting it stay

thus." McFarland said, "I pledge you my word and honor I will have the thing fixed;" and he never put a day's work on it, and in three days after navigation opened, it went out.

Q. Did Dorn after that take action against the contractors? A. That I don't know. They had to rebuild it of course; for I went down and commenced the work myself before they got there.

Q. Did that interrupt navigation? A. Yes, sir; four or five days; but Mr. Dorn wa'n't to blame for that.

Q. When you were Superintendent did you possess, in fact, the power to control these contractors, or did they do as they chose? A. At first I thought I had the power; at all events I assumed it, and did what I could do by threatening, "Now if you don't do it I'll have it charged to you." I used to under Mr. Skinner. I would go along and make my estimate of what was necessary, and charge that every evening to the contractor. Then I had the power: because if my estimate was allowed, and Mr. Skinner would be sure to allow it, I could go on and do the work independent of them if they didn't do it; and thereby I used to drive them to a great many repairs, because they knew I had the means in my hand to do it. In that way I used to get a good deal done. But when the contractor found out a year or two afterward that he need not pay—

Q. Why could you not do the same thing as under Skinner? A. I told you we failed. The bill was rejected by the auditor, and said that must come out of the contractor.

Q. Why didn't you have the same power with Dorn? Why didn't Dorn allow it? A. Mr. Dorn had only been in a year. Last year I did not make any estimate. I supposed the canal was being enlarged and everything put to rights.

Q. Did you inform Mr. Dorn frequently, when you were superintendent, that they were not living up to the contract? A. I have often spoke to him that the men were determined not to do anything.

Q. Have you ever informed Jenne? A. Yes, sir; I spoke to Jenne and said it was a hard matter to make them do anything.

Q. Did you give up trying to make them do anything? A. I got disgusted and tired.

Q. You felt their influence to be too strong? A. I knew how it would be; they were mixed in with everything; I have seen their operations for the last ten or twelve years in the State.

Q. The contractors? A. Yes, sir; any man with half an eye can see the tendency of things. It's no use talking.

Q. You became discouraged from trying? A. I said I wouldn't have anything to do with it; I wouldn't take the office again, if a contract was to be let.

Testimony is also given by Jacob A. Mead, of the great corruptions in regard to canal lettings, as follows:

Jacob A. Mead, being duly sworn, testified as follows:

Q. State fully and fairly what you know in reference to the management of the canals, as if you had been particularly interrogated in reference to it? A. I will briefly give my reasons for finding out what I have about the matter. The canal

board, eight out of nine, requested the Legislature to pass a law changing the power of the State Engineer. The canal board are held responsible for the appointment of engineers, though in reality they have no control over them. I think in this investigation you gentlemen will find that the key-note of all this bad management in regard to the canals will be found in the State Engineer's department. Not that I wish to excuse any one of the canal board, for if they have any of them been guilty of misconduct in office, I hope you will develop the facts and punish them accordingly. Knowing as I do, that for a year and a half, the commissioner upon the western division has worked incessantly by all fair and honorable means, and tried every way that he could without having a perfect falling out with the State Engineer to correct the evil on the western division. I know at the same time that he has not succeeded. A majority of the canal board have also done the same thing. He has the power that they cannot overcome. Now, in regard to the State Engineer's department, I will say this that in the resolution which I offered in regard to the management of the Genesee Valley canal section, which was under contract, the answer to that resolution shows that the division engineer and his assistants have sworn to this statement of facts: that the original cost of the Cashequa aqueduct was \$5,890.97. It shows that the reconstruction of the north abutment of the same aqueduct in consequence of the break of March 17th, 1865 was \$14,899.44; that the original cost of the Allen creek aqueduct near Scottsville, was \$10,215.82; that the repairs upon that aqueduct, in consequence of the break of March 17th, 1865, was \$11,872.23. The price of excavation allowed by the engineer on the north abutment of the Cashequa aqueduct was one dollar per yard, making \$3,590.66.

Q. What kind of excavation? A. Sand and loam—earth excavation; there were 1,672 90-100 yards of embankment at 60 cents, and 461 53-100 masonry, in cement, \$12 per yard; it was masonry of stone that was there, and had fallen down from the old abutment; it was moved but 13 to 16 feet; the stones were there already cut and ready to lay up, and they were allowed \$12 a yard for that.

Q. That is the contract price? A. That is under the contract for keeping section 1 of the canal in repair.

Q. Done by the superintendent? A. No, sir.

Q. Done by contractor? A. The contractor is allowed this for repairing break of 1865, March 17.

Q. Twelve dollars a yard for stone already cut?

A. Yes, sir, all there; all you have to do is to set a crane and put it down; three dollars would be a big price; there were 1,130 feet of white oak at \$60 a thousand; there were saw-mills within ten rods; there were 21,504 feet of white pine, at \$50 per thousand; there were 3,000 pounds of boiler iron on ice-breakers, at 16 cents; I don't know about that; they are allowed \$3 a yard for taking up the old abutment masonry at 417 65-100 yards; removing an old structure, \$100; now, then, they give credit to the State for materials furnished, 330 yards of stone for abutment at \$3 a yard, and they allow them for taking up the old

abutment, 417 yards, at \$3; making 87 yards difference; that is at Cashequa, or Shaker aqueduct.

Q. The price for taking up the abutment and what they allow the State, is very nearly equal? A. There is over \$100 difference; they pay them for more than they charge them with; you will find these facts on Assembly document 136; here is the affidavit of the resident engineer, now acting division engineer:

"STATE OF NEW YORK, }
COUNTY OF MONROE, } ss.

"Walter W. Jerome, resident engineer, on that portion of the canals embracing the breaks of March 17, 1865, on repair section No. 1, of the Genesee Valley canal, under the contract of Wm. W. Reed, for keeping said section in repair, being duly sworn deposes and says, that he and his sworn assistants, having measured the materials furnished and labor performed, and estimated the total expense of repairing said breaks, amounting to the sum of,.....\$128,563
Less, as per contract,..... 5,000

	\$123,563
Deduct amount due,.....	105,170
Amount due,.....	\$18,393

And that estimate is a fair and reasonable expense for the said repairs.

W. W. JEROME,
Resident Engineer.

Subscribed and sworn to before me, }
this 17th day of November 1866, }
GEORGE ARNOLDT,
Commissioner of Deeds.

There is another thing to which I desire to call the attention of the committee, because I want to see the canals kept in some kind of shape. While there has been money enough spent on the Genesee Valley canal to keep it in good condition for boating, and to have everything in order, it will not run another year without going to wreck. There seems to have been a determination on the part of the engineer department for some reason or other to steal all the money they can get. Before the Senate Committee yesterday I asked Mr. Goodsell if the State Engineer was not held responsible the same as other heads of departments were for their subordinates. He says yes. Then I went on and showed him some of these beauties before that committee.

Q. Tell us what this work was worth? A. You will see by these estimates, if they do not show it I can explain it very readily. This work was commenced in the latter part of March or the first of April, and the water was let in in the forepart of May, and the estimate you will find here in yards; I was going to show you that, in the course of some six weeks, the amount of embankment and excavation to be done, which was estimated, would make through the Valley of the Genesee between five and six miles of good canals: the first item I see here of excavation is 51,204 yards at 70 cents; 74,789 yards of embankment at 65 cents; I think

that is the final amount of the quantities; if you will take this and look it through, you will find that the prices are fixed at a much lower figure than they came out at the last end; the first estimate made was \$49,000; June 1st, there was \$11,000 additional; August 9th, \$9,540 additional; September 27th, \$6,000 additional; March 28th, 1866, \$1,650 additional; April 14th, \$3,310 additional; May 8th, \$7,620 additional; June 18th, \$22,050 additional; November 17th—that was the final estimate, where there had been no work for months—\$18,393 additional. That is all I want to say, I think, in reference to that.

Q. You don't draw a comparison between the prices there and fair prices except in two or three instances? A. I will give you my opinion about it; excavation would be a good price at 40 cents; embankment certainly could not be worth, where they use the same earth excavated, over 25 or 30 cents; as for the masonry, there are plenty of men who would be glad to have the job at three to four dollars.

Q. What makes this masonry worth any more than a dry stone wall? A. It is cemented.

Q. Cementing is not worth more than a dollar a yard more? A. It is considered to be worth from \$3 to \$4 to do that work: White oak under these circumstances should not have cost more than \$25 a thousand; pine should not have cost over \$20 a thousand; I have written to a man who furnished it, and I am expecting a letter every day informing me how much they did pay; that, I believe, is all I want to say in regard to section 1; now, in regard to the Chenango canal extension; I regret exceedingly that I have found the state of things in the Chenango extension that I have; I called upon the State Engineer for a report whether there had been any change in the line on the Chenango canal, and if so, whether it had increased the cost; the copy of the resolution is not here, but I copied the facts from the paper before it went to the printer's, and the statement will be on our files in a day or two; I propose to show from the State Engineer's report, where his subordinate says that the lines have been changed; on page 75 of the annual report of the State Engineer for the year 1866, I find the following language: [Reads.]

Two railroad bridges are now required; one for the Binghamton and Syracuse, and the other for the New York and Erie railroads. These structures I have regarded as included in the contract for all bridges from sections 1 to 5 inclusive, and have included their cost in estimate for that group. Another railroad bridge will likewise be required for the Albany and Susquehanna railroad. The last named bridge I suppose the railroad company will build for themselves when needed.

The work on sections Nos. 1, 5, 6, 7, 8, 9, and 13, was well advanced when I took charge, and several other sections had just commenced. Work is now in progress under all the contracts except the following:

Sections Nos. 15, 19, 20, 21, 24, 25, 28 and 29; culverts from sections 21 to 30, and the contractors for sections 24, 28 and 29; and the last group of culverts have been notified to begin their work.

The cost of constructing the work will exceed the estimated cost, at contract prices, as reported last year, for various reasons, many of which could not certainly have been foreseen previous to opening the work, as, for instance, the classification of material, the proper method of finishing the prism where quicksand and other unstable material occurs; also in the method of protecting the banks of sections built in the river, where the original estimate was based on the supposition that a simple slope wall of heavy stone would be adopted—rip-raps and loose stone protection, and in one instance rubble masonry in cement have been substituted.

The reason for not using slope wall, as originally intended, was because stone in sufficient quantities could not be had without great trouble and expense. While there was abundance of material for loose stone protection and rip-rap, and while the price of the latter has generally been about the same as that of slope and protection wall, and sometimes considerably less, yet the quantity generally exceeds considerably the amount that was estimated of slope and protection wall for the same locality. On section No. 5, vertical wall in cement was deemed necessary to save a valuable mill site, and was constructed along the race, which otherwise would have been filled up. The item of excavation on nearly all the sections will be increased over the original estimate, as more or less outside ditches and extra excavations always occur that were not foreseen in getting up the approximate quantities. The construction of roads also increase the cost of several sections, where it seems no estimate had been made by the former engineer in charge, but where the roads are to any great extent changed, generally the object gained is the saving of road and farm bridges. Rock excavations have occurred on several sections where none was anticipated, and where it was known to exist has generally been found in larger quantities than the former engineer expected. These facts only develop themselves in the progress of the work.

Sections Nos. 2, 5, 6, 9, 11 and 17 are examples thus far of increased cost on account of the occurrence of rock in unexpected quantities. Section No. 26 exceeds the engineer's estimate somewhat largely, as do several other sections and groups. Originally the principal item of work was embankment, occasioned by locating the canal far out in the river, at a point, too, known as the Narrows, where in times of freshets there is a great depth of water and a violent current.

My estimate of the cost of constructing this section is based on the supposition that the line should be thrown more into the bluff, which increases the excavation and diminishes the embankment.

This change I consider necessary, firstly, for the safety of the work; next, the landowners on the opposite side of the river, where the bank is low, would be greatly damaged by any narrowing of the channel, which would cause an increased height of water in flood times; and again, if the embankment should be built, a large area of land must necessarily be taken above and below the Narrows, for borrowing pits, which the State would have to pay for, thereby virtually increasing the cost of the section by way of land damages, when the material on the hill-side and bluffs would answer every purpose of building the great bulk of the bank exactly as well.

It would probably take ten acres, or five on either side to make the necessary embankment, at a cost of \$800 or \$1,000, at from \$50 to \$100 per acre. He says further: "I have made allowance for the contingency of any land slide that may be likely to occur from the steep hill-side, after making excavations along the base of the bluff. I think the estimate is large. In making the location of the line of this section, I have followed the example of the most experienced engineers in the location of canals at points of like character in the State of Pennsylvania, which have stood the test of time and the shock of floods.

I will here give a copy of the estimate of the cost of section 26, and show a comparison:

ESTIMATE of the cost of Section No. 26, Chenango Canal Extension, at the time the work was let, June 15, 1866, and also Hanks' estimate of the amount of work done. John Kiley, Contractor.

Original quantities.	Hanks' quantities.	ITEMS.	Contract price.	Received price.	Original estimate.	Estimate March 1, 1867.
6	9	Acres, grubbing and clearing,	\$1 00	\$1 00	\$600	\$900
.....	.....	Acres, bailing and draining...	1 00	50	100	50
12,000	36,300	Cubic yards, earth excavation,	40	40	4,800	14,520
5,000	8,900	do rock with blasting...	1 00	1 00	5,000	8,900
10,000	27,200	do rock without blasting,	50	50	5,000	13,600
155,000	1,600	do embankment,.....	15	15	23,250	240
5,000	.....	do lining,	30	30	1,500	.....
15,000	.....	do slope wall,.....	50	50	7,500	.....
.....	6,860	do loose stone,	1 50	1 50	.....	10,290
					\$47,750	\$48,500
		Remaining to be done,.....	.....	.....	.....	74,875
						\$123,375

Q. Can you explain the practical operation of the exercise of power by the State Engineer? A. Yes, sir, I can. The State Engineer by law is required to give a certificate of fitness, capacity and integrity. I put two constructions upon it. I stated before the committee that it was necessary to pass that law on two accounts; first, to relieve him of an embarrassment which he cannot be relieved of in any other way. He is asked to certify to those three things, when in fact he does not possess either of them himself. Either qualification he is not in possession of himself, and consequently it puts him in a very bad position. The next thing is that no engineer appointed by that canal board can be located unless the State Engineer favors it. He has the entire control over the engineer department, and I contend that he should be held responsible, and is responsible in the eyes of the law for what his subordinates do.

Q. Is there in your knowledge any case where an improper man is retained, or a proper man has not been appointed by the operation of that statute? A. Mr. Goodsell has acknowledged to me on different occasions, that he has kept engineers in his employ who were a detriment to the interests of the State.

Q. What reasons did he give for it? A. Because he did not like to turn out Mr. Storey; that Mr. Storey was getting old, he has been told all these things with reference to section one of the Valley canal, time and again, but he never would consent to have Mr. Storey removed; the canal board did everything in the world to have him turned out, but he would not consent to it; the majority of the board did turn him out and made another appointment, but Mr. Goodsell would never give a certificate and locate the engineer, and has not to this day; the canal board is thus tied; they cannot do anything to correct these errors.

Q. What was the action of the Canal Committee? A. They have not acted upon it.

Q. How long has it been before them? A. It has been before that Canal Committee, I think, for the last six weeks.

Q. Why don't they act upon it? A. Up to the time I commenced to give them my resolution they came to the conclusion that they would report against it. They sent to me and stated that they had come to the conclusion to report against the engineer bill, and they asked me if I wished to be heard in reference to it. I said, 'No, sir; you have eight out of the canal board asking for this, and I have told you in the presence of Mr. Goodsell, and Mr. Goodsell did not deny it, nor will he dare deny it, that he has kept engineers under him who were a detriment to the State. I did not suppose it was possible that the committee would report adversely under those circumstances. All I want the Canal Committee to do is to hold that report until I ask them to report, and during the time I will prepare myself to make a motion to disagree with the report of the committee.' The thing stood in this shape, and last Sunday I took these papers to Mr. Littlejohn and showed him. I said to him

'Mr. Littlejohn, I am ready now to have you make your adverse report.' He said, 'I cannot for a moment think of making an adverse report in reference to that bill after what you have just shown me.' I said, 'I want some action one way or the other, for I am not going to let this thing sleep.' He said, 'I will get my committee together, but can never consent to reporting against the bill under the circumstances, knowing what I do now.' I said, 'I told you enough, but I found things a great deal worse than I had any idea they were.' He said, 'I will have an immediate action on the part of the committee.'

Q. Can you give us any information as to who is benefited by these expenditures? A. On section 1; Mr. Lord is the owner.

Q. What Lord? A. George D. Lord; he is the assignee.

Q. How can you account for the canal board making a contract and exercising so little judgment in making prices as these figures show—for instance, 155,000 yards at fifteen cents? A. How can the canal board know the situation of these things? How can they know what is advantageous or disadvantageous? They must depend on the engineer and his estimates; the canal board should not be held responsible in these matters I contend, because the engineer department is created expressly for that purpose.

Q. How about this loose stone rock, \$1.50? A. Before the Senate Committee, last evening I asked Mr. Goodsell whether he did not give positive orders not to have the loose stone and rip-raps shown in the quantity exhibited at the letting, and he did not deny it; I told him if he denied the fact I would try and find proof; I am interested in having the Genesee Valley canal taken care of; I do not propose to have it all go into one individual's hands.

Q. Can you tell how any party was improperly benefited by these operations there? A. I suppose the contractors have been benefited if anybody.

Q. Do you suppose the line was changed in the Chenango extension for the benefit of the State or for the benefit of the contractor? A. For the benefit of the contractor, as a matter of course. The auditor tells me that, if his recollection serves him right, there has never been an application made to the canal board to change these lines, and it seems to me that the resident engineer has gone on and changed them without any legal authority. It is the duty of the resident engineer to report to the State Engineer and the State Engineer to the commissioner in charge, and jointly they recommend to the canal board a change of the line, and go through this course before they can act upon it and make the change a legal transaction. But that has not been done, as I was informed by the auditor.

Q. Was Mr. Bruce the commissioner in charge? A. Yes, sir. There was a case of this kind last week of a change over the Chenango canal extension before them; they laid it upon the table. General Martindale said that he had heard of

some mischief with reference to the Chenango canal, and he proposed before they went any further to know what it meant. They laid it on the table and refused to act. In connection with the Genesee Valley canal, I want to say one other thing, I do not know the fact to be so, but I have a very strong suspicion and believe it to be true. There would be no difficulty in finding it out by swearing the engineer. It is this: In making up these estimates they would take the vouchers of Lord and go to the engineer and make their estimates upon them.

Q. Do you mean the monthly estimate? A. Yes, sir.

Q. Have you the names of the engineers? A. Jerome and Holley.

Q. Give the name of the engineer on the line of the Chenango canal extension? A. Byron M. Hanks.

Q. Do you know of any other irregularities existing anywhere? A. I don't know of any except what I have stated.

Lorain L. Nichols, being re-called testified as follows:

Q. I want you to give a description of section 9, Chenango canal extension as it was when you left it, and what you find in these papers that I have got from the department as to the shape of that section? A. The contractor had been over the whole section except six or eight chains at the lower end, but it was nearly finished. The excavation was nearly all done. I did not consider that there was over \$2,000 worth of work to be done when I left the section. I looked it over, and the contractor himself looked the figures over to see how much was to be done, and my recollection is that there was somewhere in the neighborhood of \$2,000 worth of work to be done. In looking at the last monthly estimate in March—the present month—I find that there has been \$18,800 estimated. That is some \$10,000 more than I supposed the work would cost in the first place.

Q. The whole of it? A. Yes, sir. The \$2,000 that was still to be done when I left. There is estimated since I left 4,200 yards of rock. There was seventy to seventy-five chains gone over when I was there, and on that length there was no indication of rocks. I did not see any rock or any indication of rocks, and there was only six or eight chains to be excavated. If the whole excavation on these six or eight chains had been of rock, it would not have amounted to that amount.

Q. Where are those estimates; in the State Engineer's office? Who was the engineer who made them? A. Mr. Hanks certified to them.

Q. Do you know of any other peculiarity in either of the other sections from an examination? A. On section 8 of the Chenango canal extension I think there has been a very improper expenditure of money.

Q. Please state what it is? A. It is put in Mr. Hanks' report, and has what is called sheet docking to prevent the same from sliding in. He has put into that section 35,000 feet of oak at \$60 per thousand, 82,800 feet of pine at \$40 a

thousand, 35,600 feet of hemlock at \$25 a thousand, and 4,050 pounds of spikes and nails at twelve cents.

Q. I suppose you mean to say that admitting these expenditures to be necessary, the work would be rotten before the canal would come into use? A. Yes, sir; that is one improper expenditure; but I do not suppose it was necessary to put in timber work at all.

Q. These prices are fixed by the price of the contract? A. Yes, sir; the excavation through which this timber is put was mostly done when I was there.

Q. You do not believe any such expenditure as this was necessary or proper? A. I do not.

Q. You give as your first reason that the wood work would decay before the canal could be brought into use? A. Yes, sir.

Q. When you come to put the canal into use was it necessary it should be there? A. I do not think it would be.

Q. Why do you think it would not be necessary? A. I don't consider it any more necessary there than any other place; he says it is to prevent sand from running in; there is no sand in the bottom there; with a slope of two to one, I do not consider that there is any great danger of sand running in to fill up the bottom.

Q. No quicksand? A. No, sir, dry sand; it is a dry cut.

Q. You are desired to speak of any irregularity in the management of the canals as fully as if you were asked the question? A. The first claim here on this paper shows the quantities that were exhibited at the time of the letting on section 26 of the Chenango canal extension (referring to the statement to be found in the testimony of the previous witness, Mead); the item of a sloping wall I would like to speak of; I estimate that there would be required 15,000 yards of slope wall; I have understood that it has been charged that I was an incompetent engineer, and that slope would not stand a month, and the line has not been changed to avoid it; in regard to that I was specifically directed to estimate for a slope wall and not to estimate for a rip-rap.

Q. Directed by whom? A. By Mr. Goodsell, who was then division engineer.

Q. When were the quantities made up? A. They were made up in the month of April or May, 1865.

Q. The estimated quantities at the letting? A. Yes, sir.

Q. That was the spring of the year before he was elected State Engineer? A. Yes, sir; the directions he gave me were before the election; I was making out the quantities.

Q. In 1865 he gave you directions? A. I went there in the fall of 1864, and in the fall of 1865 he was elected.

Q. And you made the estimates under his directions? A. Yes, sir.

Q. It now appears that this slope wall was dispensed with, and rip-raps substituted? A. Yes, sir.

Q. Can you state whether the amount of rip-

rips was greater or less than the estimate you gave for slope wall, which was —? A. It is not as great. There has been paid for 6,860 yards, and I estimated 15,000. Mr. Hanks states that it will take 74,875 more to complete the section.

Q. Are you aware it is supposed there will be a great deal more rip-raps than is estimated? A.

I do not suppose that is one-quarter of what will be required.

Q. What is the price of that slope wall. A. Fifty cents.

Q. The rip-raps the same price? A. The rip-raps \$1.50.

The witness produced the tables in evidence, as follows:

ESTIMATE of the cost of Section No. 5, Chenango Canal Extension, Chas. G. Danolds, Contractor, at the time the work was let, June 22, 1865, and also Hanks' estimate of the amount of work done up to March 1, 1867.

Original quantities.	Hanks' quantities.	ITEMS.	Contract price.	Received price.	Original estimate.	Estimate March 1, 1867.
3.50	7.50	Acres, grubbing and clearing,....	\$1 00	\$1 00	\$350	\$750 00
		Acres, bailing and draining,.....	25 00	20 92	25	20 92
61,000	38,837	Cubic yards, earth excavation,....	16	16	9,700	6,213 92
3,000	9,050	do rock with blasting,.....	80	80	2,400	7,240 00
2,000	8,487	do rock without blasting,....	80	80	1,600	6,789 60
31,000	9,870	do embankment,.....	16	16	4,960	1,579 20
2,000	.....	do lining,.....	10	.....	200	.....
2,300	2,500	do puddling,.....	10	10	230	250 00
7,300	392	do slope wall,.....	1 38	1 38	10,074	540 96
500	13,189	do loose stone,.....	1 00	1 00	500	13,189 00
5,000	.....	Feet, B. M. Hemlock,.....	20	.....	100	.....
100	.....	Pounds spikes and nails,.....	10	10	10	.....
10	12	Rods road,.....	10 00	8 00	100	96 00
	1,205	C. yds. rubble masonry in cement,.	8 00	8 00	.....	9,640 00
		MATERIALS DELIVERED.				
	1,500	Cubic yards, loose stone,.....	.....	70	.....	1,050 00
		Remaining to be done,.....	.....	.....	\$30,309	\$47,360 00
					.....	13,195 00
						\$60,555 00

ESTIMATE of the cost of Section No. 6, Chenango Canal Extension, at the time the work was let, June 22, 1865, and also Hanks' estimate of the amount of work done up to March 1, 1867, Chas. A. Danolds, Contractor.

Original quantities.	Hanks' quantities.	ITEMS.	Contract price.	Received price.	Original estimate.	Estimate March 1, 1867.
1	52	Acres, grubbing and clearing,....	\$1 00	.....	\$100	\$520 00
		Acres, bailing and draining,.....	25	\$17 29	25	17 29
141,000	34,565	Cubic yards, earth excavation,...	15	15	21,150	5,184 75
1,000	3,500	do rock with blasting,....	1 25	1 25	1,250	4,375 00
1,500	5,416	do rock without blasting,....	75	75	375	4,062 00
16,000	6,517	do embankment,.....	13	13	2,080	847 21
1,000	.....	do lining,.....	10	.....	100	.....
	1,195	do puddling,.....	15	15	.....	179 25
2,500	282	do slope wall,.....	1 25	1 25	3,125	352 50
	9,602	do loose stone,.....	1 00	.....	.....	9,602 00
5,000	.....	Ft. B. M. hemlock,.....	20 00	.....	100	.....
100	.....	Pounds spikes and nails,.....	10	.....	10	.....
		Remaining to be done,.....	.....	.....	\$28,315	\$25,140 00
					.....	24,562 00
						\$49,702 00

ESTIMATE of the cost of Section No. 7, Chenango Canal Extension, at the time the work was let, June 22, 1865, and also Hanks' estimate of the amount of work done up to March 1, 1867. Wm. T. Dennison, Contractor.

Original quantities.	Hanks' quantities.	ITEMS.	Contract price.	Received price.	Original estimate.	Estimate March 1, 1867.
030	6	Acres, grubbing and clearing, ..	\$50 00	\$50 00	\$15 00	\$300 00
		bailing and draining, ..	10 00	.....	10 00	9 90
26,400	37,340	Cubic Yds., earth excavation, ..	17	17	4,488 00	6,363 10
	4,200	do rock not blasted,	1 50	1 50	.....	6,300 00
20,000	21,600	do embankment,	19	19	3,800 00	4,104 00
	3,000	do lining,	40	40	.....	1,200 00
	51	do slope wall,	2 00	2 00	.....	204 00
5,000	3,400	Ft. B. M. hemlock,	25 00	25 00	125 00	85 00
100		Pounds spikes and nails,	12	.....	12 00	.....
		MATERIALS DELIVERED.				
	78	Cubic Yds. slope wall, stone, ..	4 00	3 00	.....	234 00
					\$3,450 00	\$18,800 00

ESTIMATE of the cost of Section No. 8, Chenango Canal Extension, at the time the work was let, June 22, 1865, and also Hanks' estimate of the amount of work done up to March 1, 1867. Geo. D. Lord, Contractor.

Original quantities.	Hanks' quantities.	ITEMS.	Contract price.	Received price.	Original estimate.	Estimate March 1, 1867.
1	4	Acres, grubbing and clearing, ..	\$30 00	\$30 00	\$30	\$120 00
		bailing and draining, ..	500 00	.....	500	499 00
59,000	94,800	C. yds., earth excavation,	16	16	9,440	15,168 00
	360	do rock without blasting,	75	75	.....	270 00
21,000	25,500	do embankment,	15	15	3,150	3,825 00
	6,650	do lining,	50	50	.....	3,325 00
	45	do slope wall,	2 00	2 00	.....	90 00
	35,000	Ft. B. M. white oak,	60	60	.....	2,100 00
	82,800	do white pine,	50	50	.....	4 140 00
5,000	35,600	do hemlock,	25	25	125	890 00
100	4,050	Pounds spikes and nails,	12	12	12	486 00
20	43	Rods road,	9 00	9 00	180	387 00
		MATERIALS DELIVERED.				
	500	Ft. B. M. white oak,	60	40	.....	20 00
	1,400	do white pine,	50	40	.....	56 00
	200	do hemlock,	25	20	.....	4 00
					\$13,437	\$31,380 00

Q. Please state facts in reference to the letting of the bid for work on the Genesee Valley canal? A. This statement I have upon information. Peter Dunn made a bid on the Genesee Valley canal for work. His bid was a little lower than George Lord's. George Lord went up to Portage and saw him, and offered to give him \$5,000 if he would allow his bid to be made informal. He said it will cost all of a thousand to fifteen hundred, and I will give you \$5,000 if you will allow it to be done. Mr. Dunn said that he concluded he would prefer to do the work. Mr. George Lord was the next above him. He came down in company with some one whom I can find out, and got off at Schenectady, where the clerk of the contracting board was living, and whose name was David P. Forrest. This was on Sunday morning. Mr. Dunn, or some one he sent down to look after his matters, when the bids came to be overhauled, learned that his bid was informal,

and Mr. Lord got the work without giving Mr. Dunn the \$5,000. How much he gave for the informality I don't know.

Q. When was that? A. That was in 1864 or '65. Mr. Inman, Dr. Mills and Peter Dunn, will all come before this committee and swear that Mr. Inman's name was in its proper place, and it appears now entirely off. There is another fact that can be proved here, and that is there is such a thing as taking a name off paper just as clean as anything in the world.

Q. Can you give these facts more particularly? A. I can by some inquiries. I have telegraphed this Mr. Dunn to come here.

On the first of January, 1864, Mr. Wright became canal commissioner. In answer to a question he stated:

I can say in answer to the question that I think the State has suffered largely from irregularities—from frauds; I do not impute any dis-

honesty, but there has a favoritism grown up which I have seen sometimes, while I was in the board, and which has been very materially felt since; they advertise to the public, asking proposals, stating that certain formalities must be observed in regard to the lettings; that the propositions must conform to certain rules and regulations which the sharpest lawyers might look at, and no two of them would understand alike; hence A, B, C and D may bid for contracts—A is the lowest bidder, B the next, C the next, and so on; they would find a slight irregularity on which A would be thrown out, and another on which B would be thrown out, and still another on which C would be thrown out, until they came to D, and D would be a man perhaps who was in the "ring," as it is called, and the contract would be awarded to him; then at the very next meeting of the board, perhaps, the same rules and laws governing them, in regard to irregularities, would not govern the bids that were put in then; it has really grown into this that you don't let the work to the lowest bidders at all.

By Mr. Gibson:

Q. State any irregularities you have any knowledge of—any departure from a legitimate and honest way of transacting this business? A. I can recollect one fact by which the State has been defrauded in consequence of that sort of management. It must have taken place as early as 1855 or '56. I speak of it as important to show what means they sometimes take to defraud the State. There is a law that requires a publication of the estimated quantities of work to be done on a section. They say that such a section requires so much excavation. The engineer furnishes to the commissioners or the board an estimate, say for 50,000 yards of earth excavation, and 25,000 yards of rock, etc.

Q. State the fact—what I want to know is what you know yourself. A. I know these facts because I was a bidder then myself.

Q. What do you know of speculations in contracts or in other dealing with this State—facts within your own knowledge? A. I know that the State in that particular case was defrauded of several thousand dollars; I was going to tell you how, but if you don't want to hear me, I will not; I don't know as it would be proper evidence.

Q. Go ahead. A. It was a section on the Cayuga and Seneca canal, immediately below the village of Cayuga.

By Mr. Gibson:

Q. Who was the engineer? A. I have been trying to think, but it is a man who lives in Syracuse; his published quantities showed several thousand yards of rock excavation; we will assume that there was 20,000 yards of rock excavation and 20,000 yards of earth; the work was worth fairly fifteen cents for the earth, and fifty cents for the rock excavation.

Q. Who was the contractor? A. I should have to refer to the papers to ascertain the name, but I think Compton was the man; there was a suit between Compton and this engineer; they quarreled and the facts came out.

Q. Who was the plaintiff and who the defendant? A. I do not know.

Q. When was it tried? A. 1857 or 1858.

Q. In what court? A. Some court in the neighborhood, but whether it was the supreme court or not I cannot state; the fair value of the earth excavation which I bid was fifteen cents; by assuming this false quantity of rock excavation, a bid was put in at thirty-five cents, and there never was any rock there; the State paid thirty-five cents for the earth excavation by reason of assuming that there was rock there, which I would have been willing to have done for fifteen cents.

Q. Do you know of any case within the last five years where a contract has been let to the actual lowest bidder? A. Yes, sir; I think I recollect of cases where they were let to the lowest bidder, but those cases were very rare. They were not generally let to the lowest bidder. They were thrown out on account of irregularities under the rules of the board.

Another witness testifying before this committee gives testimony of differences between what the work was estimated at and what was finally paid according to the certificates made by the engineers in charge. In some cases the estimates of the work was \$9,000, and the actual cost of the work \$20,433. He goes on to state in the same way as the last witness that this was in consequence of making an estimate of so much earth and so much stone. Some information which certain contractors possessed would enable them to put in their bids at a great advantage over those who did not seem to be so well posted. I will here state that some few days ago the chairman of the Canal Committee, the gentleman from Ontario [Mr. Lapham], put a question to one of the speakers, whether he knew of any case where estimates were made for locks to be built, and upon the actual building of the locks it was found that they exceeded the estimate. I supposed from the manner in which he put that question, that he believed there had been no such case. I have before me the case of the Moseskill lock, on the Champlain canal, authorized to be built for \$48,300. Albert G. Sage obtained the contract, in July, 1866, for \$47,000 or \$48,000. It was required to be commenced immediately and be completed May 1, 1867. He worked a little on it and sold out to Charles J. DeGraw, in October, 1866. He did not begin laying stone work until March. No one consented to the delay. He applied for the privilege of having the lock put over another year, and said he could save \$9,000 by so doing. Consent was refused. They got the mason work done about May 6, 1867. The price paid was ten cents a yard for the embankment, forty cents for excavation. The lock was located with reference to building in the summer, and so that navigation should go on. To build it in the summer would make a better lock, better bank and better work all through.

In the testimony given by Emerson E. Davy he states of this lock:

A. There was a new lock, built on the embankment, built with soft earth and frozen chunks right on the bank of the creek. On the back side it is thirty feet up. The action of the water, when the water was let into the canal, and when the frost was coming out of the bank, has made a sort of porridge of the whole thing, and it is set-

ting right down on the bank of the creek, and is sliding into the main channel of the creek. The whole thing has been washing away; and for three weeks we have had no navigation there. Whereas, if it had been properly planned and executed, it would have been ready for work from the commencement of navigation.

Q. How came that to be let? A. It was let to Belden upon the policy of the State adopted in the Constitution perhaps of 1846, that when any of the locks required to be taken down, they should be rebuilt to the size of the Erie. They located this lock right over into the creek, almost.

Q. Did they build that when they ought to? A. No, sir; I understand it was let in the first place to Sage & Peck. Sage & Peck didn't commence their work when they agreed to. They sold their contract to C. J. De Graw. He didn't commence the work as soon as he should. He should have commenced and finished it last fall, so that this spring the work should be firm. This spring he did not commence it till late, and did not put on the number of men he should on the work, and then there was no competent engineer to see that the work was well done. And when De Graw was, there doing to the work he was not so much to blame.

Peter Rozell testified as follows:

Q. Have you been down to this Moseskill lock? A. I went down there a little while; I didn't stop long. I have not been there since the break.

Q. When were you there? A. I was there this spring, just before they let the water in.

Q. How did it appear then? A. It appeared very rough; and it appeared they thought, too, it wouldn't stand.

Q. Describe why. A. Because we knew that this was work done in the winter; and the way they filled it up with frozen dirt, frozen chunks of sand and everything; the water came in, and we all thought when the water was let in it would go right out.

Jeremiah Brown testifies about this lock as follows:

Q. I understand you know something about how this lock was originally built? A. Not the lock, but the embankment. I know they sent me with some men to dig down the bank, in the break, while I was there. There being a crust over the top of the bank it cracked off, and they wanted to get teams and drive along there, and wanted me to dig the bank down to drive teams along, and I dug down a space along fifteen feet, very hard, and I found it was frozen dirt and ice amongst it; and I went out ten or fifteen feet further and dug down and found it the same; and I took out a piece weighing fifteen or twenty pounds, mostly ice, some specks of dirt in it, and sent it up to Mr. Dorn, and they all came down there—the engineers and Mr. Dorn were down there.

Q. That was the bank built last winter? A. Yes, sir; it was frozen, dirt and ice.

Q. Was there much ice? A. That piece I sent up was probably half snow and ice; and we dug in a number of places, dirt, and snow and ice amongst it, all mixed in together; as it thawed out, it kept it soft all the time.

Q. What did Mr. Dorn or the engineers say when they saw that ice? A. Mr. Dorn said it could not have been a sufficiently firm bank while that was in there, and had got to thaw out; and some engineers said that could not be remedied now, and the only way was to get a pile of dirt and keep drawing it there until it got hard.

We will now see what a wise canal commissioner we had in Mr. Dorn, that he really could see that an embankment which was built in the winter time, the embankment filled up with ice and snow, would not be likely to stand when warm weather came, and that the only way to remedy this difficulty was to keep drawing on dirt until it could be made hard. I turn again to the testimony.

Q. How high is this artificial bank? A. It must be fifteen or twenty feet.

Q. How long? A. It must be one hundred and sixty feet, I should judge; just the length of two canal-boats, on the heel-path side, the east side.

Q. With the stream east of it? A. Yes, sir; there is a creek, the Moseskill creek; it runs round and a little island forms below the bank. It isn't now, for the bank has slid down and filled that all up, so that it rises from six or eight feet, way from the bottom.

Q. Where does the main stream run now? A. They have built a dam across, and the water can't go down, and the stream goes down the other side. This was dead water. The old run was ten or fifteen feet deep, and this bank slid down, and kept sliding, and slides down now all the time—so they tell me—though they have got it three or four feet higher than it was when I went down.

Q. Is there any danger there now, should you judge? A. They keep to work all the time; it is wet now, and the water keeps running out a little; last Sunday morning there was a little stream burst out as big as your finger, and lots of little fellows running out through all the bank; they wasn't at work on Sunday, but were at work on Saturday, putting on dirt all the time.

Q. Where was the old lock? A. A little further west.

Q. This new lock was built further east, so that it could be built while the old lock was there? A. Yes; when they were at work on that.

Q. There was nothing to hinder their commencing this lock last summer? A. Nothing to hinder them; the old lock was at work last summer.

Q. And navigation could have been continued in the mean time? A. Yes, sir.

Now, the most remarkable thing in this matter is the testimony of Daniel C. Jenne, the engineer who had this matter in charge. He testified that the contractor was to have so much for the embankment and so much for the excavation. Jenne was asked:

Q. In your judgment was that embankment properly made? A. That embankment was properly made so far as it could be done in the winter season.

Q. Was it properly made for any season? A. Yes, sir.

Q. For the purpose for which it was intended? A. So far as I know.

Q. Why do you think it went out? A. On account of the action of the rains and storms upon the material.

Q. Is that usual for new banks to go out? A. Very common for banks to slide—new banks, when wet, saturated with water, and exposed as banks have been this spring.

Q. Would you call that proper work, to build a bank that would go out with such a rain—would you call that proper performance of a contract, for a bank to go out as that did? Suppose you had been the owner of it as a private party, and had to run the whole risk and expense yourself, would you have built such an embankment for such a purpose? A. I should build such an embankment if it had to be built in the season it was built in.

Q. Would you have built it in the winter in the way it was? A. I should have preferred the summer season.

Q. If it had been your own and you could have done it in the summer? A. I would have built it in the summer.

Q. Was there any necessity of doing it in the winter season—could it not have been done in the summer? A. Yes, sir, it could have been done last fall, and a large part of this bank has been built this spring, since the rain. The bottom of the bank was built in the winter season.

Q. If that bank had been built last summer, when it would have been built, and if the work had been started when it could have been started, would there have been any danger of the break which occurred? A. I cannot tell.

Q. What is your judgment? A. It is a material that operates very different from anything I have ever seen before.

Q. Assuming it to have been built last summer, in your judgment do you believe it would? A. I should not have calculated that it would, but the action of that bank is different from anything I have ever seen.

Q. What is the soil? A. Clay.

Q. All clay? A. No, some spots of quicksand in that.

Q. If there were improper materials in that bank, were they not improperly put there? Does not the contract expressly provide that it shall be done without any improper material put in there? A. They took the best material that could be found.

Q. Does not the contract expressly require proper materials to be put in? A. Of course, the contract requires it.

Q. Was it not your object to see that proper materials were put in? A. Exactly.

Q. If it had been constructed of proper materials in the summer, do you believe it would have gone out? A. My expectation would have been that it would not have gone.

Q. Do you believe it would have gone out? A. As I said before, the action of that material is different from what I should have anticipated; I could not be certain about it.

Q. I must renew my question—a very plain one: The contract required that it should be constructed of proper materials. If it had been constructed in the summer season, of proper materials, do you believe it would have gone out?

A. I answer the question as I did before, that the material is different from what I supposed it was.

Q. I must renew the question, and I want a plain answer to it. The contract required that the bank should be constructed of proper materials—A. That I have answered. Yes, sir.

Q. Was it constructed of proper materials? A. No, sir.

They go on and in that way examine him, and with great difficulty in getting his answers. But what I want to come to is this, that this imperfect workmanship, this break or slide, is a damage to the State and not to the contractor, for I see here the question is put:

Q. Were you there when the break occurred?

A. There has been no break, *only a slide*.

Q. So that navigation was interrupted—were you there then? A. No, sir.

* * * * *

Q. Whose duty was it to place it in proper repair—would it come under the contract, or be a State matter, or belong to De Graw?"

Now, here is the point. It had been imperfectly built of snow and ice in the winter season; it had been built of improper materials; it had gone out of repair, and now the question is—"whose duty was it to place it in proper repair—would it come under the contract, or be a State matter, or belong to De Graw?"

A. It would not belong to the prior contractor, because the work was not accepted of the construction contractor; the construction contractor would do the work and the State would pay him for it.

Q. Why should the State pay him for it, if it had not accepted the contract? A. It would pay him for the work and the materials put in the work.

Q. Why so, if he pretended to have finished it and completed his contract? A. He had not pretended to complete it; it was not accepted, but finished.

Q. How much would it cost, in your judgement, to put it back to where it was before the slide occurred? Part of the bank ran away into the stream, did it not? A. Yes sir.

Q. How much money would it cost to put it back to where it was before this accident occurred? A. I don't know how much.

Q. In your opinion? A. It is something I have not made an estimate of. Perhaps \$1,000 or \$2,000.

Q. Did Mr. De Graw go on, or did the State? Who put it back in that position? A. It was done by the contractor.

Q. De Graw? A. Yes, sir.

Q. Did you pay him in behalf of the State for the work? A. Yes, sir; for all the material he put in.

Q. How much a yard for that? A. The same as the other; he has different prices for different kinds of material. He had the brushing material for brushing the bank, cutting the brush and laying it into the earth.

Q. You paid him for the brush and earth also, is that the idea? A. Yes, sir; we have a price for that kind of work.

Q. Has he had his pay for that yet? A. He

has not. I think that brushing has been done in the month of June.

Q. Why would he be paid for that work if the accident happened in consequence of his negligence in building the bank? A. I don't understand it all happened in consequence of his negligence. The contract required that he should be paid for all the material he put into this work.

Q. You have already said that if it had been done in the summer and had been done of proper materials, this accident would not have happened, in your judgment. Why, then, if this accident would not have happened but for his negligence or the negligence of Sage, which is the same thing, should he be paid by the State? A. We always pay for all the materials put by the contractor into a bank.

Q. Even if it is the negligence of the contractor; even if he puts in improper material; does the State pay for that? A. No, sir.

Q. Good or bad, proper or improper—do you mean that? A. That depends upon where they are used.

Q. Do you mean that anywhere improper materials being put into a bank the State pays for them? A. We don't propose to put in improper materials.

Q. When they are put in as they were here?

A. The materials are all put in under directions.

Q. Under whose directions? A. Under the direction of the engineer in charge.

Q. By your authority—by your assistants? A. My assistants and inspectors that were there.

Q. Do you know that was done by their directions—that they authorized improper materials to be put in there? A. No, sir; I don't think they did authorize anything that was improper; I don't—

Q. Improper materials did get in there did they not? A. I am not aware of it.

Q. Had not you stated that that bank would not have gone out, if improper materials had not been put in, in your judgment? A. I have not stated that improper materials were put in.

Q. Have you stated that the bank would not have gone out if constructed of proper materials? A. I stated in my opinion if built in the summer season it would not have gone out.

Q. Did you not say if that bank had been constructed of proper materials it would not have gone out, in your belief? A. By qualifying with putting in the summer season.

Q. Did not you say that that bank would not have gone out if constructed with the proper materials in your belief, without any limitation as to time? A. I don't wish to be so understood if I did.

Q. Did you think it would have gone out if constructed of proper materials in the winter season, or the spring? A. I should not have expected it to go out; I didn't expect it to go out when it did go out.

By the Counsel:

Q. Do you understand that the assistant or inspector being there, and approving of the material as it goes in, shields the contractor, even if he is guilty of negligence? A. No; not if he has put in improper materials in an improper way.

Q. Suppose an assistant or inspector winks at

it or does not object to it, does not the contractor claim that if he gets your inspector to indorse it as he goes along, that shields him? A. They may claim that, but I think there is a clause in the contract preventing that—a clause that requires that improper materials shall not be put in.

Q. Who is to be the judge of that; is not the inspector the judge, and is not his decision final against the State? A. There use to be a clause in the contract, I am not sure now, however, if the division engineer or resident engineer discovers improper materials put in, but he may require them to be removed.

Q. Have you not discovered that there are improper materials in that bank? A. I have not discovered any, sir.

Q. Has no evidence of that been brought to your mind? A. I have not discovered that there were improper materials; what I mean by that is the best materials that could be obtained.

Q. Do you mean to swear that the bank was constructed of proper materials? Now, give me a straight answer? A. That was my idea; that it was built—

Q. Do you mean to swear that the bank was constructed of proper materials? A. Yes, sir.

Q. Do you believe so now? A. I believe that bank was constructed of proper materials, being built in the summer season.

Q. Do you believe, from your examination since, that that bank was constructed of proper materials? Do you believe now that it was? A. I think that the material is different from what I anticipated when it was put in there.

Q. Do you believe now that that bank was constructed of proper materials; will you swear that you believe that now? A. I think that the material is not as good as I would like to have seen.

Q. Do you mean to equivocate? A. No; I don't mean to equivocate at all.

Q. Then, first answer my question—will you swear that you believe that that bank was made of proper materials? A. Well, as I said before, I supposed it was when it was made.

Q. Will you swear that you believed it was? A. I will say that the material has turned out different from what I anticipated.

Q. Will you swear that you believe now that that bank was constructed of proper materials? Don't tell me that it turned out different from what you anticipated, or anything of the kind—will you tell me now that you believe it was constructed of proper materials? A. I think if the bank had been built in the summer season—

Q. You mean to equivocate? A. I do not, sir.

Q. Why don't you answer that question? Do you believe now that the bank was constructed of proper materials? I am not going to ask that question again; I shall move the Chairman the proper motion if you don't answer it. A. [After a pause.] I don't know that I can answer it.

Q. Why cannot you answer it; don't you know what the proper materials are? A. I ought to.

Q. Don't you? A. I think I do.

Q. You are an engineer of some ability? A. I am an engineer.

Q. Of sufficient ability to know proper materials to put in a bank, are you not? A. I hope so; I trust I am.

Q. Don't you believe yourself to be competent? A. I think so.

Q. Have you examined the materials in that bank? A. Yes, sir.

Q. Particularly? A. Yes, sir,

Q. For the purpose of seeing whether they were proper or not? A. Yes, sir.

Q. What is your judgment from that examination; were those materials proper or not? Have you got any opinion upon the subject; have you formed a belief from that examination? A. I have formed a belief that the material is not as good as I would like to have seen there.

Q. You have formed a belief from your examination? A. From examination, and the way the materials have proved, I have formed that opinion.

Q. From the examination do you believe that those materials are proper? A. I don't want to answer in that way; I want to explain myself in the matter, and want to answer intelligibly so that you will understand it.

Q. Is there any difficulty in answering whether you believe that the materials are proper? A. I say the materials turned out different from what I supposed.

Q. Why can't you answer my question—do you believe now that the materials were proper? A. I believe that the materials, perhaps for a bank—

Q. Proper for that bank? A. I would say as things have turned out and operated—

Q. I want you to answer my question—are they proper materials for the bank? A. I should prefer to have had different material.

Q. Why don't you say, if you think so, that the material is bad? A. I don't say that all the material is proper material, in some cases.

Q. Do you believe that quicksand is a proper material to be put into a bank? A. I believe there is a little quicksand in the material, but the greatest part of it is clay.

Q. Don't you know that quicksand is in that bank? A. That is my opinion.

Q. Do you think that is a proper material? A. Not to make the whole bank of.

Q. To make any part of a bank of, is it a proper material? A. What I mean is to make a whole bank, to make it all quicksand.

Q. Do you believe it is a proper material to go into a bank at all? A. It is a material—if quicksand is mixed with clay it is all together, and you can't separate it?

Q. Do you believe it is a proper material to go into a bank? [A pause.] Do you mean to answer it? A. I cannot answer it any different from what I have answered it.

Q. Will you answer it now? Do you believe that quicksand is a proper material to go into a bank? A. I don't believe that quicksand is a proper material, to make it all quicksand.

Q. Do you believe, to make any part of a bank, quicksand is a proper material? A. Not where you have quicksand alone.

Q. Will you answer that question? Do you

believe any quicksand should go into the bank at all? A. I believe banks are made part of quicksand and will stand.

Q. I shall come to the conclusion that you are a very unwilling witness. Will you tell me whether you believe that quicksand should go into the bank at all? It is your belief, not what you can do or cannot do. The question is whether you believe that any quicksand should be put into the bank? A. Quicksand alone is not a proper material.

Q. Quicksand with other material? A. Quicksand is frequently used in banks, clay mixed with it.

Mr. Stanford—People frequently do things they ought not to do.

A. I always prefer not to have quicksand in a bank.

Q. Why so? A. Because quicksand with water will run.

Q. Now, do you think it is a proper material to go into a bank? A. I said before I don't think quicksand alone is a proper material for a bank.

Q. Do you think it ought to go into a bank at all? A. Not alone; not quicksand by itself.

By Mr. Stanford:

Q. Then I understand that you mean that some quicksand with other materials is proper? A. I believe that it is not as good a material as something else, but where there is clay enough to hold it together—

Q. If a bank gives out from being constructed with such materials, do you think it ought to be charged to the State by the contractor, and the engineers ought to allow it? A. I suppose if the contractors put it in under instructions the State should pay for it.

Q. That the State should pay for the unfaithful acts of its servants—of its engineers? A. That was the best material that can be found in the region; when we use all the best material there is we have to pay for it.

Q. Do you mean that there was no other material that the bank could be made of? A. There was no other material in the vicinity of that lock.

Q. How far would you have to go to get it? A. All this material along here is clay, in this section of the country.

Q. How far was this removed—how many feet? A. From the new channel it was moved from three to five hundred feet.

Q. By carting? A. Yes, sir; it was all cartage.

Q. Is not there gravel within a mile from there? A. No, sir; no gravel at all in that country; it would have to go by boat.

Q. Was there any difficulty in boating it and getting it there at the time specified in the contract? A. It could have been boated, but the expense would have been—

Q. Those materials could have been furnished in the summer season, could not they? A. I don't know whether they could to get gravel—to get proper materials for the bank.

Q. If it had been done the previous season it would have been hard at the time the water was let in, would it not? A. That was what we calculated it would be.

Q. Would it not have been in your judgment? A. I suppose it would have been.

Q. Would it not have been in your judgment?

A. Yes, sir.

Q. If this bank had been made last summer of the same material, in your judgment it would have stood? A. I think so.

Q. The contractor having neglected last summer to make this bank according to your instructions, under those circumstances do you think the State ought to pay him for making it over again? A. It has always been supposed that the State would have to pay for such work.

Q. In your judgment, as an honest man, representing the interest of the State and the public, do you believe that he ought to be paid over again by the State for doing the same thing? A. The contractor ought to be paid for what he does if he is permitted to do it.

Q. Whether it is done right or wrong? A. That brings in a different point, of course.

Q. If permitted to do so? What do you mean by that? A. By those in charge of it.

Q. By whom? A. By the engineer.

Q. Yourself, do you mean? A. Myself and my assistants.

Q. Do you mean, then, that yourself and assistants did permit this to be done in this way at this time of year? A. It was permitted to be done; but instructions were given to do it before that.

Q. Do you mean to say you permitted it to be done at an improper time in the season, in such a way as to saddle the State with the risk of it, when you had ordered it to be done in the summer and he didn't do it? And do you mean to say that you assented to it in that season with such permission as to saddle the State with the risk of it? A. I mean that it has been customary to pay for all work that has been done by contractors.

Q. Even if it is from their own negligence? A. It has been customary to pay them for their work when they have done it.

Q. The question is whether that work, having been constructed by your directions or the directions of your assistants, although it was constructed at a time contrary to your original directions, do you think the State ought to pay for it? A. It has always been rubable to pay contractors for what they have done.

Q. Do you think it is right? A. I think it is right for the contractor to be paid for all the work that he does.

Q. I want to give you a fair chance. A. I don't think you do: I want to answer every question fairly and honorably and straightforward; that has been my ambition and always been my life.

Q. The work having been constructed contrary to your directions, do you believe it is right for the State to pay for it under those circumstances? A. I believe if the contractor does the work he should be paid for it.

Q. Although done contrary to your directions—contrary to the original instructions of the engineer? A. No, sir; I don't mean the least part of that.

Q. Do you believe, Mr. Jenne, that the State ought to pay for work done by a contractor con-

trary to the original instructions of the engineer and contrary to his contract, although the engineer and his assistants may have assented to the doing of the work? A. I don't believe the contractor should be paid for doing the work contrary to instructions; if it is not proper work of course we were left to the alternative of getting the work done; we had to get it done at the season of the year when it ought not to have been done.

Q. He took the contract about the first of July? A. Some time in July, I think.

Q. That work was to be done and the lock completed the first of May? A. Yes, sir.

Q. There was plenty of time to make the embankment in the summer so that it would have stood, in your judgment? A. Yes, sir.

Q. You directed the contractor to do it, and he neglected to do it at that time? A. Yes, sir.

Q. When winter came it was a more dangerous time, particularly with this material, to make that embankment? A. Yes, sir.

Q. And he could have made it also in the fall, so that you think it would have stood, if made in September or October? A. The trouble was on account of the rains.

Q. There was time enough before the frost? A. It is pretty doubtful; but he could have got the bottom of it done by planking his roads.

Q. When winter came, he built this embankment of a kind of material that proved improper for that kind of embankment, to be put in at that season at least? A. Put in at that season of the year.

Q. You have examined this material since the bank went out, and have come to the conclusion that it was an improper material to build it with in the winter? A. Yes, sir; I don't think it was a proper material to build it with in the winter.

Q. Then in consequence of this improper material and the improper time, his embankment went out in your judgment? A. The slide, yes, sir.

Q. Selecting an improper time and this material which you have since examined—these two things, in your judgment, made the slide? A. Yes, sir.

Q. Now he is building it up again? A. He is, and enlarging it; he is to work at it.

Q. Has it slid some since? A. Yes, sir.

Q. Is it sliding now? A. Yes, sir.

Q. With this very material? A. Yes, sir.

Q. You are estimating and paying him and he is receiving his pay for building this embankment at an improper time and with improper material? A. Yes, sir.

Q. Now, if it should go out again in consequence of not having been built last summer, and if he should have to rebuild it, then he would be paid again for this next slide, would he not—paid the third time under this rule? A. That has been the usual custom?

Now, then, locks can be built according to estimate and cost no more than the estimate, as is supposed by the chairman of the Canal Committee [Mr. Lapham], and we have at least one instance before us, in the case of the Moseskill lock, where, if it had been built at the proper time and of the proper materials it would have

stood. Being built at an improper time they commenced repairing it in the spring, but too early; it slid out again, and the contractor goes on again and gets paid for every square yard of earth he puts in as often as it is washed out; so this question arises, he might be paid even for the third time.

Q. You would expect to be paid again? A. Yes, sir.

Q. How much per yard was the original contract? A. So much for excavation and so much embankment.

Q. If it was a good contract, if there was money in it then the contractor would be directly interested in having it slide, because he would make money every time he put it back? A. Let me explain. He made a portion of this bank from the excavation of the new channel which he got paid for as excavation; he had carried that over two hundred feet, and by carrying it over two hundred feet to go into the embankment, he was paid for that material in the bank.

Q. Assuming that his was a paying contract for the material put into the bank then the contractor would be interested to have slides, would not he if he gets paid every time? A. There might be such a state of things.

Q. Then he would be interested to select a bad time, to make it in the winter instead of in the summer. If paid every time there is a slide for putting the material back, it would be his interest to have it slide? A. It might be the case.

Q. Do you think this present bank will go out again? A. I hope not.

Q. Do not you have great fears of it? A. I have some fears of it.

Q. If this bank should go out again and he should build it up the third time, you would believe it was right for him to be paid the third time for that? A. I don't know of any other way.

Q. You believe if it goes out this time and if he builds it up again he would have to be paid? A. Yes, sir.

Q. And then if it should go out a fourth time, and so on until warm weather came, when he could get a permanent bank, you believe he would have to be paid every time until he reached that dry season for what should have been done so as to stand the first time? A. The bank is sliding; it is not going out, it is only sliding and the dimensions of the bank are increasing.

Q. Suppose it should slide out again? A. The slide is forming the back side of the bank layer, which helps form the bank and increases the dimensions of it.

Q. It would keep making more work every time it slid, would it not? A. He would be paid for the materials he would put upon it to make the bank permanent.

Q. Until it went round to July again, and he got as good a bank as he would have had at the start if he had lived up to his contract? Has it been your practice since you have been engineer of State works to deal in that way with contractors? A. I never had a case of that kind before.

Q. I understood you to say that that was the practice—that it was the custom. A. I say I have never had a case of this kind like this bank.

Q. Then you do not determine this according to the custom? A. There is no other case like this where it is sliding out in the same way; but there are cases where the bank washes out for instance, from a river, or something of that kind, it would fall out from the custom in the enlargement of the Erie canal, and in cases of that kind."

William T. Manchester was examined at length by this committee. He gave testimony showing the great abuses flowing from the time being changed different from the contract, and from the material being changed, so that the amount paid the contractors would sometimes be more than the original estimate of the contract price. Now, I have a case here showing that contractors will not hesitate to apply the science of chemistry in erasing names and securing a contract. In 1864 Peter Dunn was a bidder in the name of one Kingsley for work on section 2 of the Genesee Valley canal. He put in his proposition in regular form, with a bond all regularly signed and certified to by the supervisor of his town, one Joseph Ingham. It was the lowest bid on the contract, and his friend, Myron H. Mills, testified that he was present at that bidding; that it was ascertained that this was the lowest bid; that he was requested to examine the papers; that he examined them; that he found that the bidding was in due form, having all the proper signatures, and that it was ascertained that this was the lowest bid. Afterward a man by the name of George D. Lord was very anxious to get that bid, and offered \$5,000 if Mr. Dunn, or those for whom he acted would consent that he should have that bid made informal by an erasure. It was not fully consented to; there were some negotiations, but objections were made, and it was not finally carried out. But Mr. Lord determined, if possible, to effect his object. At this time David P. Forrest, of Schenectady, was clerk of the contracting board, and Lord, probably with a view of having Dunn's bid made informal, made a Sabbath-day call on Forrest at Schenectady, and the following is Forrest's account of his pious doings on that day:

Q. Do you remember of George Lord coming to Schenectady on the Sabbath day to get you to show him some bids at Albany? A. Yes, sir.

Q. What train did he get to Schenectady on? A. I don't know; he was there in the morning, and must have come down on the night train, I suppose.

Q. What bid did he want you to show him? A. He wanted to look at his own bid, and the bid of Kingsley, I guess it was, I don't hardly know.

Q. Kingsley's bid, which Dunn had an interest in? A. I don't know who had an interest in it.

Q. He wanted you to show it to him? A. Yes, sir.

Q. When were those bids put in? A. Some week or more before that, in Buffalo. I think they were all advertised to be opened; a portion of them at Buffalo, and a portion of the contract at Rochester, and Syracuse, and Albany.

Q. This was a bid upon the Genesee Valley canal, was it not; to keep it in repair? A. I think it was.

Q. It had been put in at Buffalo? A. Yes, sir.

Q. But they had not passed upon the bids?
A. They had not been awarded.

Q. No awards had been made? A. No awards had been made; they were opened there.

Q. And the bids were in your hands? A. Yes, sir.

Q. Where were the bids? A. In my possession.

Q. Where? A. In the office.

Q. Whereabouts? A. In the canal office.

Q. The bids were locked up that day in the State building? A. Yes, sir.

Q. In the canal commissioners' office? A. Yes, sir.

Q. In the State building, at Albany? A. Yes, sir.

Q. And he arrived at Schenectady on Sunday morning, and requested you to show him those bids? A. Yes, sir.

Q. Before they had been awarded? A. Yes, sir.

Q. Did you go with him? A. Yes, sir.

Q. What train did you take? A. I guess it was the way train at 12 o'clock.

Q. Freight train? A. Yes, sir.

Q. There was no regular train on Sunday? A. No regular train.

Q. You took the freight train with him, and came to Albany? A. Yes, sir.

Q. Did you have a key to the commissioners' office? A. Yes, sir.

Q. Where did you get it that day? A. I guess I got the key from the man who took charge of the State Hall.

Q. You had no key to the State Hall? A. No, sir.

Q. You came to Albany and looked up the man that had charge of the State Hall? A. Yes, sir, I think I did; I am not positive.

Q. You got it in that way? A. Yes, sir.

Q. What were they in? A. They were in a safe.

Q. Where did you get the key of the safe? A. I had it in my own possession.

Q. How many bids were still unawarded? A. I think I had the key of the office. The key was in a box on the side.

Q. How many bids were unawarded? A. They were all unawarded.

Q. None of them had been awarded? A. No, sir.

Q. These lettings at Rochester or Buffalo or Syracuse were all unawarded? A. Yes, sir.

Q. When were they to be awarded? A. On Monday.

Q. The next day? A. Yes, sir.

Q. That was his only way to come through on Sunday? A. Yes, sir.

Q. Did you show him all the bids? A. I showed him all he asked to see.

Q. Did he look at all of them? A. He looked at two—his bid.

Q. And Kingsley's bid? A. Yes, sir.

Q. What did he do then? A. Nothing; he came from there down to Stanwix Hall.

Q. Were the bids all there together? A. Yes, sir.

Q. How many should you think in all? A. Some thirty or forty—I don't know but more—perhaps fifty.

Q. If he had desired to see the others you would have shown them to him? A. If he had specified any particular bids I would have shown them to him.

Q. By the practice in reference to these proposals, the county judge or supervisor of the town where the man that bids lives has to certify to the sufficiency of the sureties, does he not? A. I think there was a requisition in the published notice; I don't now recollect, for that was a matter that my attention was not called to; it was so said at the opening of these bids.

Q. Did you see him examine that bid of Kingsley? A. Yes, sir.

Q. Where does Dunn live? A. I don't know; I don't know where Kingsley lives.

Q. Where does Mills live? A. In Rochester.

Q. What town was Kingsley from? A. That I don't know.

Q. He was from Genesee county? A. I don't know whether he was or not; I cannot say; either that or Livingston county; quite likely it was Livingston county.

Q. Didn't you examine Kingsley's bid? A. No, sir.

Q. Did you see him examine it? A. Yes, sir; they both lay on the desk.

Q. Did you see that Kingsley's bid had the signature of the supervisor of the town where Kingsley lived attached to the certificate? A. No, sir.

Q. Did you notice that it was not? A. No, sir.

Q. Was the supervisor's name of the town of Genesee Falls attached to that bid? A. I do not know.

Q. Was there not a point made there by Lord that that bid was informal? A. No, sir.

Q. Did he call your attention to the fact that the supervisor's name was not there? A. No, sir, not to my knowledge.

Q. What did he say when he examined it? A. He didn't say anything; he merely asked to look at the bids, and I showed them to him, and he examined them, and I asked him if he had seen all he wanted to; he said yes, and I folded them up and put them in the safe.

Q. Was not the name of the supervisor of Genesee Falls extracted then from that bid? A. No, sir.

Q. By some chemical process? A. No, sir.

Q. Did you hear afterward, when that bid came to be passed, that the supervisor's name was not on it? A. I heard so; they said it was not on it.

Q. And it was informal for that reason? A. Yes, sir.

Q. Did you see it on it, the day you examined it in the office, on Sunday? A. No, sir, I had no occasion; my attention was not called to it.

Q. Did he agree to pay you anything for going there? A. No, sir.

Q. Then how come you to go on the Sabbath day, sixteen miles? A. Merely for accommodation.

Q. Did he say why he wanted to see it? A. He called there at my house on Sunday morning, and asked me to come to Albany, to examine a couple of propositions he had introduced him-

self, and another introduced by Dunn and Kingsley, and I told him I disliked very much to go to the office Sunday, it was not a day to do business. I wished him to postpone it until the next day; he said he intended to leave on Sunday night for home, it was necessary for him to be back on Monday at Rochester, and it would be a very great accommodation to him. He said something about his own bid, and that there might be some imperfection about that; I told him I disliked to go very much, but still to accommodate him, I could just as well go as not, and I came down on the road as far as West Albany, and went across and took the cars, and came down by the cars here, and came up in the evening. It was merely an accommodation to him.

Q. What reason did he give for wanting all that trouble taken? A. He gave no reason whatever.

Q. Why didn't you say to him that whether he went back or not it made no odds to him; if his bid was informal he could not help it. A. That was the reason of the fact that he wanted to leave that night.

Q. What possible good could inure to him to see the bids, if his bid was informal and you didn't propose to remedy it? A. None, sir.

Q. Nor allow him to do so? A. No, sir.

Q. If he left Sunday night he would be as apt to get the work, whether he saw the bids or not? A. He said if there was anything wrong about the bid he would like to look at it, and he would leave Sunday night and go home again.

Q. He came from home to see you? A. Yes, sir.

Q. Did you understand if it was all honest, and he could not change it, nor you would not permit him to change it, and the die was cast, then he would get a contract, or have it rejected, just as quick if he went there or did not go? A. Yes, sir.

Q. Then what sense was there in your taking that trouble? A. That was a mere request on his part.

Q. Didn't it occur to you to say to him, "It can't make one hair, black or white, with you; the bids are in, and if you are the lowest legal bidder you will get it, and if you are not you will not get it, and our going over on Sunday cannot make any difference;" didn't it occur to you to say that to him? A. No, sir.

Q. Is it not a little strange that you should go sixteen miles on the Sabbath day in a freight train? A. I don't know.

Q. When you saw it could not possibly aid him any? A. I didn't stop to think; I only went there by request.

Q. You didn't stop to think at all? A. No, sir.

Q. Did you think it was right to be showing these bids alone with parties interested? A. I have done it frequently.

Q. Do you think it was right? A. I was told it was nothing wrong; I inquired from the auditor whether there was any impropriety in it, and he said no. The contractor asked me to look at the bid before the contract was awarded.

Q. Who had you ever gone alone with to examine bids with, beside Lord, before they were

awarded? A. I don't know that I went with any one, directly; contractors have been in the office different times and asked to look at several bids. I think several persons asked me.

A. Do you think it is right for you, as clerk, to go with a contractor to look over the bids, after they are put in and before the board acts upon them? A. These bids were all opened in the presence of the contractors, but they were not awarded.

Q. They had not been examined by the contractors? A. Certainly, they had all been examined.

Q. Not by contractors? A. Yes, sir, by contractors. These bids were opened at Buffalo, and were exposed to the view of all the contractors interested there, and memoranda were made by certain contractors as to the amount of these bids by contractors at Buffalo. So they were at Rochester and at Syracuse; so each of the contractors what each other had bid.

Q. What did you think his motive could be to go clear from Livingston county when he had a chance to look at them in Buffalo, but come clear from Livingston county to inspect his bid, when he could make no change in it? A. I don't know what motive he had particularly in reference to it.

Q. Did it occur to you what motive he could have had, to come that distance to examine his bid and another, when it was not in his power to change it? A. I don't know what his motive might have been in reference to it.

Q. Have you not heard since. A. Yes, sir.

Q. You have heard since he made Dunn an offer of six thousand dollars to allow him to make his bid informal? A. I have heard since between these two parties.

Q. There was an arrangement to make Dunn's bid informal, or Kingsley's? A. Yes, sir, in some way or another; these conversations I learned afterward.

Q. That he was to pay some six thousand dollars for the purpose of making it informal? A. I don't know exactly.

Q. A large sum? A. No doubt it was with the intention of cheating the State out of about twenty thousand dollars.

Q. That he came on that trip? A. Yes, sir, I presume so.

Q. Did you think so at the time? A. No, sir.

Q. Didn't it occur to you at the time, that there was something evil in his coming and wanting to inspect these bids, when he could not change them legally? A. No, sir, I was a new hand in the office, and I went to Auditor Benton and asked him if an application was made by these contractors to examine these bids, if there was anything improper about it.

Q. Did you think the supervisor's name was taken off? A. I don't know.

Q. At any time? A. No, sir.

Q. You don't think it was? A. It was never taken off.

Q. But suppose parties saw it taken off? A. I can't help it, it was never taken off during the time it was in my possession.

Q. To your knowledge? A. It was under lock and key in my possession, and nobody had access to the safe excepting myself.

Now, Mr. Lord gives his statement to the same effect—that he went down to Schenectady and saw this Mr. Forrest, and got Mr. Forrest, as a matter of accommodation, to go with him to Albany and inspect these biddings; the consequence was, although the name of Supervisor Joseph Ingham appeared upon that contract, on that proposition or bid when it was put in originally, and when it went into the hands of Mr. Forrest, yet when that bid came to be opened afterward, the next day, the name of Joseph Ingham in that bond had no more “a local habitation and a name.” If Mr. Ingham ever had any desire to have his name handed down to future times amongst the archives of our State canals, where some antiquarian could go and examine the papers and see the name of Mr. Ingham, his hopes were entirely blighted by that transaction, and he could truly say, “He who robs me of my good name robs me of that which not enriches him, but makes me poor indeed.” This Mr. Forrest was afterward elected (and I think now holds the office) Inspector of State prisons. I have no doubt that if this exposure which has been made by this committee, and the testimony that has come out in this way—if that exposure had not taken place, and he had the sagacity to keep outside of the institutions of which he is now the inspector, we might at some future time see him, by the influence of this same ring of canal contractors, elevated probably to a seat in the canal contracting board. This Mr. Lord appears to have adopted something of the same plan of which we read in poetry that was adopted by Macduff. Macduff removed Birnam forest to overthrow a tyrant; Macbeth, before that, was heard to say:

“I have no dread of death or pain,
Till Birnam wood shall come to Dunsinane.”

And this Mr. Lord seems to have selected the same method of removing this *Forrest* from Schenectady on the Sabbath day to Albany, where this deed of iniquity was performed which deprived an honest man of his contract, and was intended to defraud the State out of thousands of dollars. Mr. Forrest did not succeed; for once there appeared to be so much noise made about the canal contracting office that Mr. Lord did not succeed in getting the contract. The contract, I believe, was awarded to no one. It is hardly likely that Mr. Forrest will now be permitted to rise any higher. He has been used as an instrument of wrong, by this Mr. Lord; and Mr. Lord, owing to this detection, will probably cast him off, as a libertine would cast off the mistress whom he has ruined, when the bloated evidence of her shame is made apparent, and Forrest can now exclaim of Lord, that,

“He will fly, in day’s decline,
The beauties morning made divine.”

Mr. COCHRAN—If the gentleman will give way a moment, I will make a motion that the committee rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Cochran, and, on a division, it was declared lost, by a vote of 9 to 26.

The committee rose and the PRESIDENT *pro tem.* resumed the chair.

Mr. SMITH, from the Committee of the Whole, reported that the committee had had under consideration the reports of the Committees on Finance, and on the Canals, and had made some progress therein; but, on a division, finding there was no quorum present, had instructed their chairman to report that fact to the Convention.

Mr. GREELEY—I move the roll be called.

The question was put on the motion of Mr. Greeley, and it was declared carried.

The SECRETARY proceeded to call the roll, and the following gentlemen answered to their names:

Messrs. A. F. Allen, C. L. Allen, Alvord, Barnard, Beadle, Bell, Bickford, E. A. Brown, Carpenter, Case, Champlain, Cochran, Conger, Corbett, T. W. Dwight, Endress, Folger, Fowler, Fuller, Greeley, Hadley, Hammond, Hardenburgh, Hatch, Hitchcock, Houston, Lapham, A. Lawrence, M. H. Lawrence, Mattice, McDonald, Merritt, Merwin, Potter, Prosser, Reynolds, Sheldon, Smith, Spencer, S. Townsend, Wakeman, Williams—41.

Mr. HAMMOND—I move that this Convention do now adjourn.

The question was put on the motion of Mr. Hammond and it was declared carried.

So the Convention adjourned.

TUESDAY, September 10, 1867.

The Convention met at 9 o’clock A. M.

Prayer was offered by Rev. EDWARD BAYARD.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. GREELEY presented the petition of Chas. Haslam and forty others against sectarian institutions.

Which was referred to the Committee of the Whole.

Mr. CURTIS, from the Committee on Education, submitted the following report:

The standing Committee upon Education and the funds pertaining thereto, respectfully report the following:

ARTICLE —.

SECTION 1. The capital of the common school fund; the capital of the literature fund; the capital of the United States deposit fund; the capital of the college land scrip fund, and the capital of the Cornell endowment fund as it shall be paid into the treasury, shall be respectively preserved inviolate. The revenues of said common school fund shall be applied to the support of common schools; the revenues of said literature fund shall be applied to the support of academies, and the sum of twenty-five thousand dollars of the revenue of the United States deposit fund shall each year be appropriated to and made a part of the capital of the said common school fund; the revenues of the college land scrip fund shall each year be appropriated and applied to the support of the Cornell University, in the mode and for the purposes defined by the act of Congress donating public lands to the several States and territories, approved July 2d, 1862; and the revenues of the Cornell endowment fund shall each year be paid to the trustees of the Cornell University for its use and benefits.

§ 2. All the said educational funds, as they are paid into the treasury, shall be invested by the comptroller in the stocks of the State of New York and of the United States, or loaned to counties and towns for county and town purposes exclusively, and the State shall guarantee said funds against loss.

§ 3. The Legislature may provide for the payment into the treasury of money or securities for the general or special endowment of any literary or educational institution in this State; for the investment of the same and for the payment of the interest upon said investment in accordance with the terms of the endowment as approved by the Legislature.

§ 4. The Legislature at its first session after the adoption of this Constitution shall elect, in joint ballot of the Senate and Assembly, a superintendent of public education, who shall hold his office for four years and until his successor is appointed. He shall have such powers, and perform such duties, and receive such compensation as may be prescribed by law.

The Legislature at the same session shall create a State board of education, to consist of seven members; of which board the Superintendent of public education, the Secretary of State, and the Comptroller, *ex officio*, shall form a part; and the other four members shall be elected or appointed, as shall be provided by law.

The State board of education shall have general supervision of all the institutions of learning in this State, and shall perform such other duties as the Legislature may direct. The term of office and the compensation of the members shall be prescribed by law.

§ 5. Instruction in the common schools and union schools of this State shall be free, under such regulations as the Legislature may provide.

The committee beg leave to state that the first section of this article repeats article IX of the present Constitution; and adds to the three funds there mentioned two new funds; one of which, called the college land scrip fund, arises from the sale, under chapter 481 of the Laws of 1866, of the land scrip granted to the State by the act of Congress named in the article; and the other called the Cornell endowment fund, arises from the subsequent profit to be realized by the purchaser and paid into the treasury, according to the terms of the contract of September 18, 1866, between the commissioners of the land office and Ezra Cornell.

The second section of the article provides for the better security of the school moneys, of which more than one hundred and sixty-seven thousand (\$167,000) dollars have been lost within the last thirty years, through a loose system of loans upon bond and mortgage.

The third section secures to those who may wish generally or specially to endow educational institutions, the guardianship and investment of their money by the State, and its disposition in accordance with the wishes of the donor subject to legislative approval.

The fourth section places all the educational institutions of the State under the general supervision of a single board, of which the Superintendent of public education is a member. The committee are of opinion that so long as the State

maintains common schools, subsidizes academics and supervises colleges, it is obviously better that all these interests should be the charge of a single department. The committee, however, propose no change in the State care, but only in the method of its exercise.

The fifth article gives to the freedom of the common schools the protection of the Constitution.

Respectfully submitted,

GEORGE WILLIAM CURTIS,
Chairman.

ORNON ARCHER,
JOHN STANTON GOULD,
OLIVER B. BEALS.

Mr. Conger differs with the majority of the committee upon a portion of the first section of the article; and Mr. Clinton and Mr. Larremore object to the fourth section. Otherwise the report is unanimous.

Mr. CURTIS—I wish further to say that Mr. Conger, a member of the committee, differs in regard to the first section of this report; that Mr. Clinton and Mr. Larremore members of the committee have also some difference to suggest to the fourth section. Otherwise the report is unanimous on the part of the committee. I move, sir, that it be referred to the Committee of the Whole, and that the standing Committee on Education be discharged from further consideration of the subjects submitted to them.

The question was put on the motion of Mr. Curtis and it was declared carried.

Mr. GREELEY—I call up for consideration the resolution which I offered on Friday last.

The SECRETARY proceeded to read the resolution as follows:

Resolved, That the Committee of the Whole having under consideration the articles reported by the Committees on Finance and on Canals respectively be instructed to report the same with any amendments they may have made thereto, at noon on Tuesday next.

Resolved, That the Convention do thereupon proceed to consider such reports, and all amendments that may be offered thereto, ten minutes being allowed for the advocacy of each amendment, and ten minutes for the statements of objections thereto, and that such report and article or articles be the special order from day to day till the same be disposed of.

Which, on his motion, was amended by striking out the words "at noon on Tuesday next," and inserting in lieu thereof the words "at the close of this day's session."

Mr. GREELEY—This is the tenth of September—the day on which this Convention, by a very large majority, voted that its deliberations ought to terminate. We have not yet received the reports of all our standing committees; we have not considered at all some of the most important topics pending before us—the Judiciary, the Government of Cities, Education and Public Charities are a few of the topics not yet touched. In the mean time, since that resolution was passed, one of our members has taken a wife and departed for Europe, unable to wait any longer. [Laughter.] Several delegates have been called home to the bedside

of dying relatives; some have gone home sick, and may not be able to rejoin us. I am privately assured by several of the most distinguished members of this Convention that, in coming here, they have left duties very urgent and pressing—some of them public duties, which they hoped to be able to postpone until the close of this Convention; but now they feel compelled to leave us this week or the next, to discharge those important and pressing duties. In the mean time, also, one of the leading advocates of an early dissolution of all things has detected an error of a million of years in his calculation, postponing to that extent the event through which, possibly, some part of our constituency may have expected relief from the dreary, interminable debates of this Convention. [Laughter.] I apprehend, Mr. President that there is great danger that this Convention will dissolve by natural decay [laughter] before it will be able to reach any conclusion of its labors. The gentleman who has held the floor during the last two days' sittings of this Convention, and since the beginning of whose speech, I trust, we have grown somewhat wiser, as well as older and grayer [laughter], promises, I believe, to finish in the course of this morning's discussion. I propose, therefore, to amend my proposition to this extent, that the Committee of the Whole be instructed at the close of to-night's sitting to report the articles or article before us. I simply change 12 o'clock noon to the close of this day's sitting in Committee of the Whole, so that if we please, we can sit until morning, and if the future speeches shall be limited, as has been suggested, to three hours each, we can have at least four more speeches this day before we close. With that amendment, Mr. President, fixing the closing of the debate and the commencing action at the close of this day's sitting, I will move the previous question on the resolution.

The question was then put on ordering the previous question, and it was declared carried by a vote of 34 to 25.

SEVERAL DELEGATES—There is no quorum voting.

Mr. GREELEY—I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The SECRETARY proceeded with the call, and the motion of Mr. Greeley was declared carried by the following vote:

Ayes—Messrs. A. F. Allen, C. I. Allen, N. M. Allen, Andrews Baker, Ballard, Barto, Beadle Bell, Bickford, Bowen, E. A. Brown, Carpenter, Case, Cooke, Corbett, Curtis, T. W. Dwight, Endress, Field, Graves, Greeley, Gross, Hadley, Hammond, Hand, Harris, Hitchcock, Hitchman, Houston, Hutchins, Ketcham, Krum, Larremore, A. Lawrence, M. H. Lawrence, Loew, Ludington, Meritt, Merwin, Pond, Sheldon, Sherman, Smith, Spencer, Stratton, Strong, Van Cott, Wakeman, Wales, Williams—51.

Noes—Messrs. Alvord, Archer, Axtell, Barnard, Bergen, E. Brooks, Burrill, Cassidy, Cochran, Comstock, Duganne, C. C. Dwight, Folger, Fowler, Fuller, Garvin, Grant, Hardenburgh, Hatch, Lapham, Lowrey, Mattice, McDonald, Morris, Opdyke, Prosser, Reynolds, Rumsey, M. I. Townsend, S. Townsend, Verplanck—31.

Mr. GREELEY—I call for the ayes and noes on the resolution.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. BELL—I would like to make an inquiry of the gentleman [Mr. Greeley] who offers the resolution, if he designs to limit the debate to ten minutes on each proposition, or ten minutes to each speaker on each proposition?

Mr. GREELEY—Ten minutes on each proposition, because each speaker can make a new proposition, if he chooses.

The question was then put on the resolution of Mr. Greeley, and it was declared lost by the following vote:

Ayes—Messrs. A. F. Allen, C. I. Allen, N. M. Allen, Ballard, Barto, Beadle, Bell, Bickford, Bowen, E. A. Brown, Carpenter, Case, Cochran, Cooke, Corbett, T. W. Dwight, Endress, Graves, Greeley, Gross, Hadley, Hammond, Hand, Hitchcock, Hitchman, Krum, Larremore, A. Lawrence, M. H. Lawrence, Loew, Meritt, Merwin, A. J. Parker, Sheldon, Sherman, Stratton, Strong, Wakeman, Williams—39.

Noes—Messrs. Alvord, Andrews, Archer, Axtell, Baker, Barnard, Bergen, E. Brooks, Burrill, Cassidy, Comstock, Curtis, Duganne, C. C. Dwight, Folger, Fowler, Fuller, Garvin, Grant, Hardenburgh, Harris, Hatch, Houston, Hutchins, Ketcham, Lapham, Lowrey, Ludington, Mattice, McDonald, Morris, Opdyke, Pond, Prosser, Reynolds, Roy, Rumsey, Spencer, M. I. Townsend, S. Townsend, Van Cott, Verplanck, Wales—43.

Mr. BICKFORD—I call up for consideration the resolution which I offered last night.

The SECRETARY proceeded to read the resolution as follows:

Resolved, That debate in Committee of the Whole on the reports of the Committees on Finance and Canals be limited to one hour to each speaker, until the close of the evening session of September 10th, and after that to fifteen minutes, and that the Committee of the Whole report back to the Convention the said reports and any amendments they have made thereto, at twelve o'clock, at noon, of the 12th of September, and that debate thereon in Convention be limited to fifteen minutes to each speaker.

Mr. E. BROOKS—The difficulty in adopting an amendment like this is that there are some other provisions in the article reported by the Committee on Finance almost of equal importance to the one under consideration. To deprive the Convention of the opportunity to discuss those provisions is very unfair and unjust. One of them, it will be remembered, relates to the taxing power of the State in regard to its public institutions. There are also referred to this Committee of the Whole some propositions reported by the Committee on the Powers and Duties of the Legislature in reference to local and general taxes. I would be very willing to put some limit on the discussion relating to the canals, but to say immediately after we dispose of this branch of the question that no proper discussion shall take place upon the provisions which follow is not just to the propositions themselves and is not just to the Convention.

Mr. ALVORD—I have some additional re-

marks to those made by the gentleman from Richmond [Mr. E. Brooks]—that this same Committee of the Whole has also the entire question of the future care and management of the canals, a matter of very great and grave importance. Whatever may be the disposition of the matter at present under consideration in the committee, I trust that some other rule than the rule suggested by the gentleman from Westchester [Mr. Greeley] and the gentleman from Jefferson [Mr. Bickford] will obtain. It may be well enough, after we get through with this morning's discussion on this matter in committee, for us to get together and agree upon a division of hours upon different sections, in order that we may arrive at a conclusion; but to undertake to cut off in this wholesale manner the debate on important matters outside of this particular thing now before us is entirely wrong and unprecedented in parliamentary usage.

Mr. VERPLANCK—I have no desire to prolong this debate unnecessarily, neither do I wish to occupy much of the time of this Convention, perhaps none of it. There are gentlemen, however, representing Western New York here, who desire to occupy some little time, and have facts and figures, correct ones, as contradistinguished from many of the statements and figures which have heretofore been presented to this Convention. From the time this Convention first convened the attempt has been to run us under whip and spur, commencing the first day of the Convention. This Convention has been in session thirty-two days less time than the Convention of 1846, and this Convention has thirty-two more members than the Convention of 1846. The Convention of 1846 met on the 1st day of June and adjourned on the 9th day of October. I do not believe much time has been wasted, except upon the report of the committee of which the gentleman from Westchester [Mr. Greeley] was chairman, and even that time was not thrown away, because committees had not reported and we could do little else. So far as other debates are concerned not much time has been lost. In addition to the subjects heretofore discussed in the Committee of the Whole it will be necessary to discuss a question very important in my judgment, to the interests of the canals, and that is the proposition of the Committee on Canals, that the tolls shall not be altered or changed. I wish to be heard on that proposition before the committee, and I regard it, next to the improvement of the canals, as the most vital question connected with the whole report. I do not desire to discuss it now, nor indicate my views in regard to it. It is a question of the very highest importance, whether or not, for twenty years to come, the Constitution shall prevent persons having the superintendence of the canals, whatever may be the conduct of the railroads, whatever rates of freight they may adopt, from changing or varying the tolls on the canals. We have before us the report of two important committees. We have had for this discussion, Tuesday after 12 o'clock, Wednesday and Thursday, and we had Friday until 12 o'clock, so that we have consumed, except last evening, but three days in this

debate, and much of that time has been taken up with the regular order of business. As I had occasion to say on Friday, when I called up the resolution of the gentleman from Wyoming [Mr. Merrill], no friend of the canals, west of Cayuga bridge, except the chairman of the committee who opened this discussion, has been able to obtain the floor upon this question. It is proposed to relieve the State from taxation, and the proposition is to kill the goose that lays the golden egg, as though the way to relieve the people from taxation, was to strike a fatal blow at the canals which would otherwise continue to pour wealth into our lap and overwhelm the gentlemen who stand here guarding the treasury. Now, we are denied even the poor privilege of a discussion and it is claimed, that a resolution should be adopted limiting debate hereafter, and reporting on the day after to-morrow the action of this committee to the Convention. I submit this is unfair to the friends of the canals, and unfair to the great measure itself. I, therefore, trust and hope the good sense of the Convention will vote down this proposition.

Mr. COMSTOCK—I appreciate the rules of this Convention, but I think the worst of all is the suppression of a fair and reasonable debate upon these questions which require a free and full discussion. We have now entered upon an important order of business. The course proposed would be most likely to insure the rejection of the Constitution. I move the previous question on the resolution.

Mr. McDONALD—I ask for a division of the question.

The question was put upon the first part of the resolution, being that portion limiting the debate to one hour, and it was declared carried.

Mr. AXTELL—I ask that the resolution be further divided, so that we may have a separate vote on that part limiting debate to fifteen minutes.

Mr. M. I. TOWNSEND—I desire to know whether the proposition, as already adopted, limits the limitation of time to this day?

The PRESIDENT *pro tem.*—The Chair does not so understand it. The Chair understands that it limits the discussion in Committee of the Whole.

Mr. COMSTOCK called for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was put on the second part of the resolution.

The SECRETARY proceeded with the call of the roll, and on Mr. Church's name being called—

Mr. CHURCH—I desire to be excused from voting on this proposition. Personally, I should be in favor of the restriction, but having myself occupied a good deal more time in discussing this question, I am unwilling to vote to restrict others. For that reason I desire to be excused.

The question was put on excusing Mr. Church, and it was declared lost.

Mr. CHURCH—Then I will vote no.

The SECRETARY proceeded with the call, and that portion of the resolution was declared lost, by the following vote:

Ayes—Messrs. A. F. Allen, C. L. Allen, Axtell, Ballard, Beadle, Bell, Bickford, Bowen, Carpenter, Case, Cochran, Cooke, Corbett, T. W. Dwight, Endress, Graves, Greeley, Gross, Hadley, Hand, Hitchcock, Hitchman, Krum, M. H. Lawrance, Loew, Merritt, Merwin, A. J. Parker, Sheldon, Sherman, Stratton, Strong, Wakeman, Wales, Williams—35.

Noes—Messrs. N. M. Allen, Alvord, Andrews, Archer, Baker, Barnard, Barto, Bergen, E. Brooks, E. A. Brown, Burrill, Cassidy, Champlain, Church, Comstock, Conger, Curtis, Duganne, C. C. Dwight, Fowler, Fuller, Garvin, Grant, Hammond, Hardenburgh, Hatch, Houston, Hutchins, Ketcham, Lapham, Larremore, A. Lawrence, Lowrey, Ludington, Matice, McDonald, Morris, Opdyke, Pond, Prosser, Reynolds, Roy, Rumsey, Seymour, Smith, Spencer, M. I. Townsend, S. Townsend, Van Cott, Verplanck—50.

Mr. HUTCHINS—I would like to inquire what the effect of adopting the last part of the resolution as read by the Secretary, will be. The previous portion of it limits debate to one hour at the close of this Convention to-day. As I understand, it was carried.

The PRESIDENT *pro tem.*—The gentleman is correct.

Mr. HUTCHINS—I hope, then, that that portion of the resolution will be voted down.

The question was then put on the last part of the resolution, that the committee report to the Convention on September 12, at noon, and it was declared lost.

Mr. RUMSEY—I move to reconsider the vote rejecting the resolution offered by the gentleman from Westchester [Mr. Greeley].

The motion to reconsider was laid on the table under the rule.

Mr. BELL—I call from the table the resolution that I offered on Friday in regard to providing for testing the capacity of the locks on the Erie canal.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That inasmuch as the question of an early enlargement of the locks on the Erie, the Oswego, and the Cayuga and Seneca canals depends, in a great degree, upon the present capacity of the existing locks to accommodate the present and prospective business of the country, and inasmuch as the reports and documents submitted to this Convention contain conflicting views and recommendations, as to the necessity of such improvements, the canal board is hereby requested to make or cause to be made such examinations, and to subject the locks upon the Erie canal, or some one or more double locks thereon to such tests as will determine the actual working capacity thereof, and report the results of such investigations to this Convention at the earliest day possible.

Mr. BELL—I took the liberty to introduce this resolution for the purpose of settling the question in dispute in regard to the capacity of the present locks on the Erie canal. It is alleged by one party, those who have had the most experience and practical knowledge on the subject, that at certain seasons of the year the locks on the Erie canal have reached their utmost capacity. While,

on the other side, and, as I think, mainly from theory, the opposite opinion is held and put forth in this Convention. Now, sir, there is a plan by which we may settle this question. There are many questions that have been mooted in this connection that do not admit of a practical and an immediate settlement, and we will be obliged, so far as such questions are concerned, to proceed on theory, but this is not the case with the question now before this committee. It is clearly susceptible of an immediate solution. I understand from those who are familiar with the subject, that the canal board can in a few hours make such experiments and apply such tests, as may be entirely conclusive in regard to the capacity of the locks on the present canals. We have wandered through theory here, sir, the most of the time during the continuance of this Convention, and when anything practical has been offered, it has been thought best to reject it and still proceed on theory. It seems to me in very many instances, we have proceeded very much like the man who bought a tract of land on John Brown's tract, and proposed to enter into the sugar-making business. He calculated if he could make a certain quantity of sugar in one day from a certain number of trees, he could, by running them on each day during the year at a certain capacity, produce three hundred and sixty-five times that quantity. Now, it seems to me, sir, that those who proceed on theory on this question are very much like that man. They in effect assert, that if the locks are sufficient to lock through a certain number of boats in one day, they have sufficient capacity during the year to lock through that number, which may be arrived at by multiplying the lockages of one day by three hundred and sixty-five. It seems that by some means a report has been submitted by some lock-tender to the auditor, which indicates that some three hundred boats have been locked through in one day. It is asserted by the opponents of this theory that this is a mistake, that this lock-tender has by a mistake in some way or other, coupled the transactions of two or three days in that report. Now, sir, as the whole question of an immediate enlargement of the locks, depends in a great degree upon the present capacity of these locks it is proper that some reliable tests should be applied. This resolution proposes that the canal board may at the earliest day possible apply some practical tests to these locks, and report to this Convention. This can be done, I understand, sir, in a day or two at the furthest. I hope it may be adopted, that we may have at least one question settled, on which we may act understandingly.

Mr. CHURCH—This is about as extraordinary a proposition as I have ever known, under all the circumstances by which we are now surrounded. I certainly have not the slightest objection that the gentleman from Jefferson [Mr. Bell], or any other gentleman in this Convention or the canal board, shall go out upon the canal and make all the tests or experiments that they see fit. But, sir, when the gentleman from Jefferson [Mr. Bell] tells this Convention that any test which the canal board may now make of one or two locks upon this canal will settle this question, he is endeavoring

oring, as it seems to me, to impose upon the credulity of the members of this Convention. Why, sir, we have had the reports of all the State officers upon this subject; we have had the experience of all the practical men concerned in navigating the canals. And this Canal Committee have called witnesses before them to examine them upon this identical subject, and my friend from Erie [Mr. Prosser] has gone out on the tow-path up to Syracuse and consulted a distinguished gentleman there, who has charge of all the horses at the station barn, upon this question of the capacity of the canal! And now, after we have discussed this question for a whole week, for the gentleman from Jefferson [Mr. Bell] to pretend that any test which the canal board may make will be decisive is simply ridiculous. It is trifling, sir, with the question; and it is trifling with the dignity of this Convention. It is a mere side issue. If these gentlemen go out to make a test others will desire to make another test. It will be said that the circumstances were not favorable, or that they were too favorable for a fair test. The canal board, I understand, has adjourned until the 12th day of October, and to undertake to get them together and have these tests made and then discuss it again will delay the decision of this question, it seems to me, many days. Now, sir, I do not object to this, because I have not the slightest objection to any test which can be made—not the slightest, but I say that it is belittling this question and can have no sort of influence upon any man's mind in determining how he shall vote upon it, and, therefore, it seems to me the resolution ought not to be adopted.

Mr. BELL—With the permission of the Convention, I wish to say one word. It seems to me, sir, to be equally strange that the gentleman from Orleans [Mr. Church] should now contend that this resolution should have been introduced at an early day. I took the trouble to show the gentleman from Orleans [Mr. Church] on last Friday the resolution I proposed to introduce, and I desired to introduce it while the canal board was in session, and could have made the test in six hours, but the gentleman said he would object to it, and he did object on Friday. He also objected on Saturday to its consideration and he would object now, if the rules allowed him to do so, to prevent its adoption. It will be easily seen that the purpose of his objection is to prevent any practical test to these locks. When he discussed this question he ignored the report of the subcommittee on canals who made the examination at Syracuse, because he says they examined a gentleman who had charge of a large lot of horses, as if horses had anything to do with the locks on these canals. His object is, and the Convention will see it, to prevent facts from coming before the committee. It is to befog the question and postpone from day to day, and from week to week, until, by theory, he will prove that the locks are sufficient to accommodate the increasing business of the country. Why, sir, he told us there is sufficient information already in the printed reports. Ask any of the gentlemen who made these reports and they will say they made them from calculation. Many of them will say they

were never on the tow-path of the canal, they made them entirely from theory, and introduced no practical test to the locks whatever. I say we can settle this question by practical tests, and the gentleman from Orleans [Mr. Church] now objects to settling this question in that manner, because peradventure it may be settled against his theory. I hope this Convention will look at this matter practically, and base their action upon some solid foundation and not be always traveling in the regions of theory, and leave practice entirely out of the question. The canal board, although it may have adjourned since, was in session when this resolution was introduced and attempted to be passed. It is unfair, in my estimation, for the gentleman who objected to it when it was practicable, now to say it is impracticable, because the canal board have adjourned and will not meet again for some weeks. I hope the resolution will be adopted, that we may understand the question now before this Convention.

Mr. AXTELL—I move the previous question on this resolution.

The question was put on ordering the main question and it was declared carried.

The PRESIDENT *pro tem.* proceeded to put the question on the resolution of Mr. Bell.

Mr. BELL—On that I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put on the resolution of Mr. Bell, and it was declared carried by the following vote:

Ayes—Messrs. N. M. Allen, Alvord, Archer, Axtell, Baker, Ballard, Barnard, Barto, Beadle, Bell, Bergen, Bickford, Bowen, E. Brooks, E. A. Brown, Carpenter, Case, Comstock, Curtis, C. C. Dwight, T. W. Dwight, Endress, Field, Folger, Fowler, Fuller, Grant, Graves, Greeley, Gross Hadley, Hammond, Hand, Hatch, Hitchcock, Houston, Hutchins, Ketcham, Lapham, Larremore, A. Lawrence, Loew, Lowrey, McDonald, Merwin, C. E. Parker, Pond, Prosser, Reynolds, Roy, Rumsey, Seymour, Sheldon, Sherman, Smith, Spencer, Stratton, M. I. Townsend, Van Cott, Verplanck, Wakeman—61.

Noes—Messrs. C. L. Allen, Burrill, Cassidy, Champlain, Church, Cochran, Conger, Hardenburgh, Hitchman, Krum, M. H. Lawrence, Ludington, Mattice, Morris, Opdyke, A. J. Parker, P. ter, Seaver, Strong, S. Townsend, Wales, Williams—22.

Mr. ANDREWS—I offer a resolution, and ask that by unanimous consent it be considered now.

The SECRETARY proceeded to read the resolution, as follows:

Resolved, That as a part of the investigation directed to be made, the greatest width of each of such boats passing the lock, be taken and reported.

Mr. LAPHAM—I suggest, by unanimous consent, that it be made a part of the resolution of the gentleman from Jefferson [Mr. Bell], so as not to have two resolutions.

Mr. PROSSER—I propose a slight amendment to it which I think the gentleman from Onondaga [Mr. Andrews] will not object to, and which I hope he will consent to; that in case

the canal board be not now in session, that the whole resolution be committed to Commissioner Hayt, of the middle section of the Erie canal, and that a report be had as soon as practicable.

Mr. WALES—I propose an amendment that the commissioner be instructed to examine the present mode of lockage on the Delaware and Hudson canal on a new method which has been recently adopted on that canal.

Mr. BELL—Will not the gentleman from Sullivan [Mr. Wales] introduce it as a separate resolution?

Mr. WALES—My reasons for offering this amendment are, that yesterday, on returning to the Convention, I saw a gentleman in Port Jervis who has spent all his days in the canal business, who said, by reason of an improvement recently adopted on that canal, the capacity of the locks are very nearly doubled. He is to send me the papers, and it seems to me that if the capacity of these locks have been doubled by the improvement, the capacity of the western locks may also be doubled.

Mr. PROSSER—I would state, for the information of the gentleman from Sullivan [Mr. Wales], that I have a statement from the engineer of the canal to which he alludes, giving the number of practical lockages there. I doubt not, from an examination of it, that it will afford him all the information he seeks. It is entirely full, and will settle the whole matter of capacity there.

The question was put on the amendment of Mr. Wales and it was carried, on a division, by a vote of 35 to 26.

Mr. BELL—There is no quorum voting.

The PRESIDENT *pro tem.*—The Chair understands there is a quorum in the house. Gentlemen will please vote one way or the other.

The question was again put on the amendment of Mr. Wales, and it was declared carried, ayes 54, the noes not being counted.

The question was put on the resolution of Mr. Andrews, as amended, and it was declared carried.

Mr. E. BROOKS—I move that the Convention now resolve itself into the Committee of the Whole under general orders.

Mr. ALVORD—I believe that cannot be done without unanimous consent. I have no objection to the gentleman making his proposition in another way, that we go into Committee of the Whole on unfinished business of the general order.

Mr. E. BROOKS—I accept that.

Mr. BICKFORD—I ask the gentleman from Richmond [Mr. E. Brooks] to give way a moment.

Mr. E. BROOKS—I withdraw my motion for the present.

Mr. BICKFORD—I move a reconsideration of the third vote taken on the resolution offered by me, and which was offered this morning, and ask that it be laid on the table.

The motion was laid on the table.

Mr. E. BROOKS—I now renew my motion.

The question was put on the motion of Mr. E. Brooks, and it was declared carried.

The Convention resolved itself into Committee of the Whole upon the reports of the Committees on Finances and on Canals, Mr. SMITH, of Fulton, in the chair.

The CHAIRMAN—The pending question is the amendment proposed by the gentleman from Erie [Mr. Verplanck]. The gentleman from Kings [Mr. Barnard] has the floor.

Mr. BARNARD—Resuming the consideration of the canal system, without wishing any further to occupy the time of the committee by reading extracts from the testimony given, although, the object I had in view in this reading was not to substitute my own language for that of the committee, and not to give a coloring to the testimony either of the witnesses or the officers whose conduct was in question, beyond what they themselves gave by their own testimony, I therefore state that the testimony discloses that contractors have influence enough to procure a change of the time of completing their work, and I refer to the case of the bridge over the Erie canal, on Grape street, in the city of Syracuse.

Thomas Brazell, of Syracuse, a contractor, testified that he made a bid for the construction of an iron bridge over the Erie canal on Grape street, in the city of Syracuse, in accordance with chapter 391, Laws of 1865, and chapter 841, Laws of 1866; said bridge to be constructed on the Whipple plan, the work to be completed by the 1st day of September, 1866. The notice was dated May 19, 1866, and signed by Bruce, Alberger and Dorn, canal commissioners. Before he made his bid, he went to Mr. Soule, resident engineer, and W. H. Geer, the division engineer, there at the time, and said:

"Is it possible that this bridge is to be built during the season of navigation? It will make an extra expense; if not, we can bid understandingly." He said, "it would have to be built within the time specified, and we would have to make provisions for damming the canal, building a coffer-dam, so as to keep navigation good."

Q. Did you see Gen. Bruce about it? A. No, sir.

Q. You then put your bid in? A. Yes, sir.

Q. What did your bid amount to? A. I believe to between \$7,000 and \$8,000; there was some \$1,200 that was included for the coffer-dam.

Q. That would be necessary, in building a bridge, during navigation? A. Yes, sir.

Q. What sum was it struck off at? A. Well, sir, I forget.

Q. How much less than yours, should you think? A. I think his bid was from \$1,000 to \$1,100 lower than mine; probably \$1,100.

The contractor to whom the building of the bridge was awarded did not commence the work that summer, nor until after navigation closed, so that no coffer-dam was necessary. The work was not finished until June of the present year. He further testified:

Q. Do you know how much his final estimates come to? A. The final estimate of the bridge now is \$10,226. I think over \$10,000.

Q. Has it cost the State that, as it is? A. Yes.

Q. And more to pay? A. Yes, sir; the plan of the bridge, as exhibited to us, was seventy-two feet span, bringing the abutment on the berme side, ten feet on the bottom of the canal; that would make it on a level with the Lock street

bridge, but they have changed that plan, and made the span one hundred and one feet, instead of seventy-two, so there was no necessity of building the abutment on the bottom of the canal, it was built right out, so that it could be built as well in the summer as in the winter. I was asking the engineer two days ago if he got any extra pay for putting in the heavy iron; he said they did not pay it yet, but they had a claim for it; the iron would be a good deal heavier on that span than in a seventy-two foot span, and he claimed an extra compensation for that.

Q. If you had been informed that you could have had until the next winter to build this, after navigation closed, would it have affected your price? A. Yes. The job, I think, would have been awarded to me; I would have bid \$1,200 less than I did, which, I think, would have given it to me; I think I estimated \$1,200 for the coffer-dam.

I also have given one instance, and I give two more instances where if the contractors are not of the ring their bids will be rejected on frivolous grounds. I state the testimony which has been given by George H. Peck, of Syracuse, showing how his bid was thrown out and a higher bid adopted, because the contractor seemed to think that he lived on one side of the street in the town of Onondaga, instead of the other side of the street, which was in the city of Syracuse, and they required the certificate of a different supervisor to his contract. He testified that he was a contractor on State works and had been so since 1852 or 1853. He was a bidder on section 26 of the Chenango canal extension. He gives the following account of what occurred before the commissioners:

A. I went in there in the morning before the board convened—that is on the 16th—after the bids and proposals were put in; Mr. Bruce asked me the question where I lived; I told him in Salina street; he asked me where it was; in the first place I stated that I had invited him to come down and see me; I told him where I was; he said, 'Is that inside the corporation?' I said it was not; then the question of residence came up; he said, 'Where is the man's residence?' Mr. Alberger said in his own breast, and he put his hand on his breast in that way [indicating]; this was before the board had convened at all; the first question that arose after they convened—this was a bid that was put in by Peck and Birdseye—George Peck, and Col. Birdseye; the first question raised was on the residence of Birdseye. We went over to the St. Charles Hotel, and got their book where he always registered his name, and satisfied them; then they went on to mine; I don't know but what this was the day the bids were opened that we satisfied them about Birdseye; then they took the night to reflect and they undertook to throw me on mine; I told them where my post-office address was, and had been for years, and all there was about it; my wife owned a residence in the city of Syracuse—that it was not actually there—it was called the city but it was just outside of the corporation; when they incorporated the city of Syracuse they did not think it would extend as far as it did; this

house happened to stand on the opposite side of the street; I had rented the house for five years; I think that it was four or five years, and it had got badly out of repair for a nice house to rent, and my mother-in-law stayed with my wife, I was away from home so much; I would not rent it at the price we could get; it wanted painting and papering; they had furniture enough, and I told my wife she had better go in and see to the repairing, and take her things over there, and see to the repairing of it; I suppose I had not slept in the house ten nights when I put in this proposal; I got the same supervisor—

Q. You had previously lived in Syracuse? A. In Syracuse; that is where I boarded in the city; in the sixth ward; they awarded me former contracts when the same supervisor vouched for me, and they threw me out on this because I was a resident of the town of Onondaga and not Syracuse; I had two contracts awarded on the same work with the same supervisor in the letting of June, 1865, and February, 1866; I got three contracts; I got sections 13, 14 and 15, and the same supervisor vouched for my living in the same place as the first letting—the letting at Binghamton; the second letting was at Owego, and the last letting was at Syracuse; I was awarded on the first letting, section No. 1, after a great deal of trouble; I found those sections let to me were not awarded until afternoon, they were not awarded at the same time any of the rest of them were; Mr. Ackley at the first letting had \$32,000 of certificates of my money; the bids were taken away from Binghamton and taken to Rochester, and there awarded I suppose; he said they were; he will swear that these bids were stolen out of his room; he had a large sum of money which he had to watch, but he said the bids were stolen out of his room while he went out to get something to eat, and my bid was scratched; this was on the Chenango extension No. 1; afterward it was awarded.

Q. To you? A. To me; the thing was so brash and Ackley knowing all the circumstances, that they awarded.

Q. You mean the present clerk of the canal board? A. Yes, sir; he did not say who did it because he didn't know; I am only stating what Mr. Ackley said.

Q. Was it awarded to you notwithstanding that scratch? A. Section 1 was awarded to me notwithstanding the scratch, but it was not awarded at Rochester, but afterward; Mr. Ackley told them right along that the bid has been altered since it went out of my possession.

Q. Since it came into his possession? A. Since it went out of his possession; then it came in again; he says he asked Mr. Geer, in Syracuse, if it would answer to leave this amount of money; he had all our certificates; he must have had a very large amount; I know I had \$32,000; he asked Mr. Geer if he thought it would be safe to leave these up there; there was a large file, I guess eighty or ninety bids; Mr. Geer told him that he thought it would; he said lock your doors; he said he put them in the drawer clear back—didn't eat half his dinner for he was afraid, and he went up stairs and the pro-

posals were gone; he said he went down and found Mr. Geer—he was scared about it, and when he got back again, the proposals were all back again where he had left them, but mine was scratched; they did not award mine at that time.

Q. This section 26 they refused to award to you because of your residence not being in Syracuse as they decided? A. Yes, sir, that is the only thing. I presume you have got the statement.

Q. How much was your bid? A. I think my bid was some—here were four sections.

Q. How much for section 26? A. I think my bid was about \$41,000.

Q. To whom was it awarded? A. It was awarded to—I cannot think of the man's name—but it was one of Lord's men—we call him Lord's man.

Q. How much was the amount higher than yours? A. Between \$5,000 and \$6,000.

Q. Were you thrown out of three others in consequence of your residence also? A. Yes, sir, three others, not being in Syracuse; mind you, they were not awarded at that time; they had to take time on it; they then went to Buffalo; Dorn was not connected with it; Mr. Dorn and I went up there, and when we got there they merely made a formal thing of it—the thing was all fixed up betwixt them before I got there; they made up the whole statement and got the clerk to read it to me; it took him a half hour to read it; I presume the paper is before the committee; Mr. Dorn did not have a word to say; they went off after these bids were put in, to the Thousand Islands, and I heard young Lord remark that they furnished a thousand dollars' worth of liquors and refreshments for them to go to the Thousand Islands; after they got back, this award was made out at Buffalo.

I refer also to the testimony of David H. Potter, of Schuylerville, showing that he put in a proposition and that he had it drawn up and examined very carefully, that his proposal was rejected and the higher bid adopted on the allegation that there were erasures, when, in point of fact, those erasures, if they existed at all, were made after he submitted his proposal to the contracting board. The testimony further discloses that the contracting board can declare the contract abandoned, and then award the work to partners of the contractors at a large advance. This appears from the testimony given in regard to section 9 of the Erie canal on one of the new jobs given out by General Bruce immediately upon his being elected canal commissioner. Root & Dennison had a contract for repairing section 9 of the Erie canal for five years at nine thousand dollars a year, and as they say more work was required by this new canal commissioner than they had contracted to perform, and, as a consequence they refused to perform it, that contract was declared abandoned, and the work was given out by General Bruce, by private contract, to James J. Belden, of Syracuse, for him to go on and clean out upon an engineer's estimate, and Belden was paid \$54,000 for this work, which took about six weeks to perform. After this six weeks' work was done the contract was again let by the year to a Mr. Selye, at about \$9,000 or

\$10,000 a year. General Bruce's testimony on this subject is as follows:

By Senator Stanford:

Q. On section 9, here, you say that you let it by private contract because you had not time to advertise. Why could you not direct your superintendent to employ men enough to do this work? A. I might have done that; there were two ways of doing it, one by the superintendent and one to let it as it was let.

By Mr. Mitchell:

Q. You preferred the latter course? A. I preferred this course at this time because there was so much work on hand, and I considered it the best course.

By Senator Stanford:

Q. You have done it by the superintendent? A. Since then I have done it uniformly; if any contractor failed to perform his contract I have directed the superintendent to go on and perform the work.

Q. You say you have since that time uniformly employed the superintendent to do this work; have you done that on sections that were not abandoned or declared abandoned? A. Where the contractor failed to do his duty; yes, sir.

Q. Was it charged to the contractor invariably? A. Yes, sir: where it was contract work, and the contractor failed to do it, I have directed the superintendent to do it, and charged it to the contractor in all cases.

Q. Now, did it not occur to you that it was a pretty extravagant way of doing work, when contractors, both before and after, were willing to take that section at less than \$10,000 a year, and give good bail to keep it in repair, for you to make a sweeping contract to allow him to take out whatever he chose, to the extent of paying in six weeks \$54,000 for the putting of that simple section in repair for opening navigation—as much as it would have been for the whole five years? A. I don't get your question correctly.

Q. Did it not occur to you, in view of the fact that that section had only been let the year before by your predecessor for less than \$10,000 a year for five years, with good bail given, and let immediately after this work was done for less than \$10,000 to a responsible contractor (Selye) for five years, that you had made an extravagant use of the money of the State by paying this \$54,000 for a contract you made with him as commissioner, for the spring's work? A. I don't know how to answer you. I could do nothing else, in short.

Q. I ask you whether it occurred to you in paying there in the spring more than the contracts were for keeping that section in repair for the whole five years, with good bail, that you had made an extravagant contract? A. If the committee will allow me, I want to state exactly the circumstances. The contractor abandoned his contract. The engineer had estimated that about twenty consecutive miles of the canal had to be bottomed an average depth of ten inches, the contractor refused to work, abandoned his contract. By the statute it is the duty of the commissioner to put the canal in condition by the opening of navigation. This was March and the canal was to open in May;

by another section, in order to put a canal under repair contract, it has to be advertised three weeks; you could not advertise this and I was obliged to put it in condition under that statute.

Q. Did you ever sue the bond of Mr. Root, or take any action against him on his bond, for damages to the State? A. Yes, sir; the bond was handed over to the Attorney-General by resolution of the board.

Q. Was it ever sued? A. I don't know.

Q. To your knowledge? A. I can't say that it was; I don't remember that it ever was.

Q. Suppose the same course had been taken with all the canals in the State that you did with that section, would it not have been a very dangerous system for the State? A. I want to explain this; I suppose what the committee want to get at are the facts in the case.

Q. You may finish the explanation you desire to make of the contract to Belden for bottoming out the canal? A. After Mr. Root abandoned this contract, there was no other way by which the canal could be put in condition than by letting it by private contract; I was entirely a novice in canal business; I did not know comparatively anything of the value of work; Mr. Belden met me one day and asked me if I would let him that section; I said to him, "There is a large amount of work to do; I am afraid there is more than you can do," something like that; he said, "I will do it;" I said "Make your prices and let me see them;" Mr. Belden made a scale of prices and handed them that day to me, I think, about noon, without saying anything to him, but that I would let him know in a day or two. I took his prices and went to Albany; I went to see Mr. Van R. Richmond who was State Engineer, and showed him that list of prices saying to him, I wish he would look it over and if they were wrong, make them what he thought they ought to be; that I did not know anything about it, and the work was in a hurry; Mr. Richmond took those prices and made some alterations, what they were I cannot tell you, but the chief item in it was excavation, which I know was twenty-five cents per yard; Mr. Richmond made a scale of prices which he said was reasonable, and I remember his saying this: "It is in the spring of the year, the dirt is soft, it is slush, there is but little time to do the work, and I think those prices are fair." I showed those prices to Auditor Benton, and he concurred with Mr. Richmond as to prices; I then showed them to Commissioner Skinner; I think Mr. Skinner remarked: "There are some there I would alter, but on the whole, I think it is near right." I came home; saw Mr. Belden; said "I will make a contract with you to do this work at these prices"; he took the paper and looked them over; said he, "they are too low"; said I, "very well, don't you take them"; he said, "I will let you know very soon"; he went out and was gone some little time—an hour or two, may be more—and came back and said he would take the work; I made a contract with him at the prices fixed by Van R. Richmond; that is all I know about the prices; Mr. Belden went on and did the work, or was doing the work; when it was about half

done it had gone so much beyond what I had supposed the section would be that I wrote the auditor on the subject; I have his letter now on my file; and his reply to me was that the Jordan level had been for a long time in a very un navigable condition, and that as long as the work had commenced that we had better make a canal (his language was something like that) and finish it up. I accordingly ordered the work to go on until it was completed. Then, after the work was done, the engineers sent in their footings of measurements; I sent for Mr. Kimball, who was then resident engineer, and lived at Fulton; he came down to the office, and I said "these measurements look enormously high; I want you to go and cross-section that work again, so that you can make your affidavit as to this work"; Mr. Kimball did so; he came back, made an affidavit as to the quantities, and I paid it; it amounted in the aggregate to about \$54,000; it might be a little over or a little short. Those are the circumstances of the letting.

Q. Did you not know at that time that there was no such thing as mud being taken out ten inches deep. A. I did not know it.

Q. Did you not know that, instead of taking out the mud from the bottom, they took it out along the side somewhat, and were in the habit of throwing it right into the middle of the canal? A. I was riding over the section one day and saw a man casting dirt from the side into the middle of the canal; I at once stopped that; it was the only evidence I ever had that anything of the kind was done; I have called attention to it, and have given strict directions that it must not be done.

Q. Don't you know that, in order to earn that wages, \$5,000, at the prices at that time, they would have had to have been on the work six weeks, which is the longest time that can be occupied to clean in the spring, with 1,200 men constantly upon it, and that they did not have a hundred men a day? A. No, sir.

As before stated, the original contract was made with Root, but Dennison was interested in the contract. As soon as the new work was given to Belden, he let Dennison have one-third interest in the new contract, and Dennison let Root have an interest in his third. The result of this operation was that Root and Dennison abandoned their contract at \$9,000 a year for a contract of one-third of \$54,000 for three months. It does not appear that the State ever collected Root's deposits or recovered any part of the \$54,000 damages caused by the breach of Root's contract. Had a suit been brought against Root and his sureties, the result might have been doubtful, as Dennison testified, as a reason for the abandonment, as follows:

Q. Did they lay out anything more than was provided for in your contract? A. I claimed they did, and they claimed they did not. It was a difference of opinion.

Q. Who laid out this work? A. The engineer.

Q. Under whose direction? A. I could not tell you; I should think the superintendent, but I don't know.

Q. How long before the contract was made,

did you get the interest of one-third? A. It was about that time.

Q. At the time the contract was made, you had an understanding with Belden that you were to have a third? A. Yes; about the time it was made.

Q. Did you receive your share of the money? A. Yes.

Q. Did Root receive his? A. Yes.

To show how the State was defrauded in the matter of this \$54,000 contract, Wm. W. Wright testified that Dr. Dennison had charge of section 9 of the Erie canal that year, but the contract was in the name of Root. The time required to make ready the canal for navigation in the spring is a month or six weeks.

Q. Do you know how much was expended on Mr. Belden's contract for spring repairs on section 9 of the Erie canal in 1861? A. I have seen it in the commissioners' report and I think it was about \$54,000.

Q. How many men would have to be employed in such a job during six weeks, to make up the sum of \$54,000? A. I don't distinctly remember what the price of labor was then, but I think a dollar a day that season of the year. It might have been a little more. I think it would be right to allow twenty-five per cent in addition to that for contingent expenses, superintendent expenses and profits, and allowing that, it would make over a *thousand* men—from 1,000 to 1,200.

Supposing the work ran for six weeks time, and John D. Spaulding testified that he went to work for Belden on this work, and that they had sometimes twenty-five men, sometimes fifty, sometimes seventy-five, and sometimes two hundred and fifty on the half that he worked on. That they ran the smaller number of men more than they did the greater. He further testified:

Q. What was the average number of men?

A. To-night, we will say, I would get word that the commissioner was coming over the line to-morrow; well, to-morrow I would have a big force of men there, and he would pass by in a carriage, and take the cars and come back, and the next day we did not have so many.

Q. Where would these men go after they left you? to the other end of the section? A. We would set most anybody to work for the time being.

Q. This day you would have two hundred and fifty men because the commissioner was coming; where would the men go the next day? to the other half of this section? A. No, sir; go about their business; they were put on there for count.

In December, 1865, David H. Potter, of Schuylerville, made a proposal to make improvements on section 4 of the sixteen mile level of the Champlain; Daniel A. Bullard was one of the sureties. The proposition was rejected by the contracting board, and the contract was awarded to W. C. Stevens, a higher bidder. This Stevens is no contractor, but a man of straw, whose name is used by the canal ring. Potter's proposition was rejected by the contracting board on the ground that there was some erasure, or alteration of words or letters. Daniel A. Bullard swears that he filled up the bid in his own handwriting. His testimony is as follows:

Q. Was the only erasure alleged, in the name 'David H. Potter,' where it occurred over your signature? A. I do not know whether that was the one; that was the only one I could see that had any appearance of alteration.

Q. At the time it was put in was the word 'David' plainly written as it now appears? A. Yes, sir.

Q. In your own handwriting? A. Yes, sir.

Q. Is the only appearance of erasure that you can discover that the small 'd' at the end of the word 'David' appears to be written over some other letter? A. It has some appearance as if it might have been blotted or altered; but it is plain now, and was when it was put in.

Q. Did that bid propose to do the stone masonry for three dollars and fifty cents a yard? A. There was one bid of that kind.

Q. Was the amount bid by Stevens for the same work eight dollars a yard? A. It was.

Potter, in his testimony, shows that the alterations or erasures were made after his proposition was delivered to the contracting board. His testimony is:

Q. Is that proposal in the condition it was when you inclosed it in the envelope and delivered it to the contracting board? A. I think not.

Q. Has it been altered since it was delivered in any respect? A. Yes, sir.

Q. In what respect has it been altered? A. In the column of dollars, under the head of 'Snubbing Posts,' the figure '0.'

Q. What was it originally? A. That I cannot say now.

By Senator Stanford:

Q. Have you got any copy of it? A. I think I have a copy in pencil mark at home.

By Senator Gibson:

Q. You don't know what it was originally? A. No, sir.

Q. It is not in the condition in which it was delivered? A. No, sir.

Q. Did you take any care in the preparation of this proposal? A. Yes, sir; after I examined it I sealed it up.

Q. Did you have it examined? A. Yes, sir.

Q. By whom? A. By Alanson Welch.

Q. For what purpose did you have him examine it? A. He being a canal man, to see whether it was all correct or not.

Q. In conformity to the rules? A. Yes, sir.

Q. What did he say after he examined it? A. He said he could discover nothing.

Q. Did he examine it particularly? A. I called him up in my room for the purpose.

Q. What did you then do? A. I sealed it up and delivered it to the contracting board; it never was unsealed until it was unsealed by the contracting board.

Q. Do you understand that it was rejected on account of this? A. I received a line from the division engineer with my draft in it, saying it was thrown out on the erasure of a figure.

Q. And you observe no other erasure but this one? A. That is the only erasure I can discover.

Q. Do you know what the difference between this proposal is and the one that was accepted? A. About \$3,000; I did not figure it, but I make it about \$3,000 lower.

Q. Was your proposal made in good faith, with the intention of having it accepted? A. Yes, sir; I did not propose for any other work, because this was right by me.

Q. And you made it with care, in order to have it comply with the regulations? A. Yes, sir.

Q. Had you been informed of any informality or defect would you have corrected it on the request of the contracting board? Yes, sir.

On another occasion, it appears by the testimony given in regard to another of General Bruce's operations immediately upon entering upon the discharge of his duties. When Gen. Bruce was first elected canal commissioner by the Legislature, E. W. Park was the repair contractor on section No. 1 of the Chenango canal at \$11,000 a year. The first action of Bruce appears to have been to get the canal contracting board to declare Park's contract forfeited. They then put the canal in order for the spring of 1861 by private contract to the celebrated firm of Belden & Co. Park commenced proceedings against Bruce as canal commissioner to compel Bruce to issue to him drafts which had accrued during the first two months of this declaration of abandonment of this contract. Bruce appeared in the action by the Attorney-General, and made a defense; but before trial the Attorney-General signed a consent that judgment go against Bruce, unless his successor should deliver to Park the two drafts demanded, and the same should be paid by the auditor. While these proceedings were pending, Park having heard that the auditor was going to draw on the Cuba Bank for the certificate of deposit of money on obtaining the contract, commenced an action against the auditor and the bank to restrain the auditor from drawing the money and the bank from paying it. Park took the ground all through that the facts did not warrant the board in declaring the contract forfeited, and that it was not properly forfeited. Then an action was commenced by the Attorney-General in the name of the people against Park and his sureties for damages for a breach of contract, Park answered denying any breach of contract, and alleging that the action of the contracting board was unauthorized and illegal. All these cases were about being tried—when the Attorney-General signed a consent that the action of the people against Park and his sureties be discontinued and all claims therein released—and that in the action against the auditor and the Cuba bank, Park should receive the amount of the deposit, together with all interest thereon; and that the State should pay all the costs of the three actions, amounting to \$354.22. The contract which Bruce made after declaring Park's contract abandoned, was to pay so much a yard for doing all that was necessary, and to put the locks in order, and furnish timber by the foot, and generally to do whatever he was directed to do. This work cost \$14,000. So that while the State was compelled to pay Park his contract price for work that he was stopped from doing, and his costs of three actions, it also expended \$14,000 in addition for the same work put out by Bruce for the benefit of his private friends. Now, I refer to the testimony given, going to show that it is

not safe for outsiders to have anything to do with bidding for contracts against any of the canal ring, and the testimony of Charles Nichols is as follows:

Q. Where do you reside? A. Town of De Witt, near Syracuse.

Q. What is your business? A. A farmer; I am in the iron works now; I have been a contractor.

Q. How many years have you been engaged in contracting? A. Over twenty years, off and on.

Q. You are familiar with the whole system of contracting, are you not—the way it has been carried on, since the State let the works? A. Yes, somewhat.

Q. Now, will you state in the first place any fact that you know of in reference to special notices, how they have been made and the effect of them? A. Well, last fall they had special notices for the different divisions—eastern, middle and western.

Q. Who issued them? A. Well, I don't know; I understand they were issued by the auditor; they were sent here.

Q. Describe the effect and what you believed the object of them to be? A. First it was supposed it was meant for what it purported to be; but I found there was no attention paid to them after the work was awarded; that is, in most cases, and there never has been, to my knowledge, any attention paid to the special notices; that is, the work has never been performed.

Q. They would be for the repair contract? A. Yes.

Q. What would they consist of? A. Here is a special notice for a section where there would be such a piece of work to be rebuilt, such a piece of wall has got to be laid over, such a piece of tow-path has got to be raised, so much excavating has got to be done in this repair contract; then after the work is awarded no attention is paid to them, the work never being done, to my knowledge.

Q. What is the effect of them? A. The effect of them is this, that unless a person understood it, or belonged to the "royal family," he would not dare to bid, because they could compel him to do the work; he would figure up what it was worth to do the work, and of course his bid would be clear beyond the others.

Q. If he belonged to the "royal family," then what? A. He would not pay any attention to it.

Q. By "royal family," you mean what is understood as the "canal ring"? A. Yes, sir.

Q. That is he would bid, paying no regard to this work, not expecting to do it? A. Yes, sir.

I refer further to the testimony of Charles Nichols to show that the contracting board are safe from any revelations as to bribery. His testimony on that subject is as follows:

Q. I will state to you your privileges as they are. I state to you that if you have been a party to paying any State officer money in consequence of any work that you have had, my opinion as a lawyer is, that you would not be bound to answer the question; you may answer or you may refuse. Now I ask you in the first place whether you have personally paid money to any member of the contracting board, or check, or anything

that meant money? A. I would not like to answer that question.

Q. You decline to answer that on the ground that it might involve yourself in the matter? A. Yes, sir.

Q. I will ask you further, if, while you were a partner in any work with Dennison & Belden, any money was paid directly or indirectly to any member of the contracting board in consequence of your being interested in these contracts; you can answer or not, as in the other case? A. Well, I should not want to answer that.

Q. You decline to answer it? A. Yes, sir.

Q. Can you answer that question without involving yourself and partners? A. If there has been any money paid, of course I could not answer it without involving them.

Q. Would it necessarily, in your judgment, involve you? A. There have been expenses of course, in a work of that kind, that I would not know what they were, or what became of them.

Q. Do you decline to answer upon the ground that you think it might lead to involving or criminating the parties? A. Yes, sir; or myself as a partner.

Q. Have you paid to any engineer any money connected with the public works? A. I should not want to answer that question.

Q. You decline to answer it on the ground, that it might lead to criminate yourself or others? A. I put it upon that ground.

Q. Have you as a partner of Mr. Belden or Dennison, stood your share of any money that has been paid to engineers, for making measurements as engineers? A. If any has been paid I presume I have; I should have stood my share, if any had been paid.

Q. Has there been any money paid by the firm to engineers for making measurements? A. I don't know that there has; I don't remember now; it is a long time since.

Q. For making measurements or anything else—don't you know that the firm paid money to engineers that has had to be accounted for among yourselves? A. I don't know; I can't say that there has not been and I don't say that there has.

Q. It is a matter with your own conscience; I want to know if you don't remember the fact that money has been used with engineers of this State? A. If there has been any as far as we are concerned, I should have been the one to pay it, and I should decline to answer the question.

Q. You would have been the one that handed the money over? A. As far as this section is concerned all the money came through my hands; the contract was in my own name.

Q. In this section or in any other, don't you know that there has been money paid to engineers by the firm of Nichols, Dennison & Belden? A. I don't know that any of the firm paid money to engineers.

Q. Have you paid money where the firm was interested, to engineers? A. No, sir; I think not.

Q. You say you have never directly or indirectly paid money to engineers? A. No, I don't say that.

Q. Well, the question is, have you, as a mem-

ber of the firm of Nichols, Dennison & Belden, directly or indirectly been the means of paying money to engineers to obtain favorable measurements or estimates? A. Well, I should decline to answer that question.

Q. On the ground that it might lead to criminate you? A. Yes, sir.

I also refer to the testimony of General Bruce and Mr. Alberger, to show that when they were questioned as to the fact whether they had any presents made to them or any money paid, they declined answering, availing themselves of their privilege that they could not be compelled to criminate themselves. General Bruce's evidence is as follows:

Q. Have you ever received any presents from the contractors? A. Well, in relation to that, I will answer you in this wise: there are allegations and charges made against me, and so far as anything of that kind is concerned, I must say, that with all due respect to the committee, if you want information on that subject, you must obtain it from others, and not from me; I don't want to say *pro* or *con* in regard to allegations as against myself.

Q. You say there are charges against you; what do you mean? A. Allegations, I mean.

Q. Then I understand you don't propose to answer any questions in regard to any presents or money that has been alleged to have been paid you by the contractors? A. My answer was, that in relation to that, if there is any desire on the part of the committee on that subject, they must obtain the information from other sources than from me; I don't suppose I am called upon to testify on those subjects.

By Senator Gibson:

Q. The committee do not desire that you should give any evidence that would tend, in your judgment, to criminate yourself; but in the conduct of this investigation feel bound to get any fact that any witness is willing to testify to, and to give every opportunity to any person charged to exculpate himself. Under that statement do you decline to answer the question propounded to you? A. I decline in the way I have indicated, sir.

Mr. Alberger's testimony on that point is as follows:

Q. Since you have been canal commissioner have you received any money from the contractors? A. In what shape?

Q. Have you had any presents made by contractors, directly or indirectly? A. I will answer that question, sir, in a general way; I have received nothing from contractors, or persons interested in the canals, in the shape of *compensation for services rendered or services to be performed*.

Q. I repeat the question? A. That is my answer, and I will say that I decline to answer any questions personally relating to myself, except in a general way, until I have had an opportunity of examining your testimony.

Q. The testimony is long, and is not all written up yet. A. I make the demand that it is my right to see it.

Q. You don't need to read it to answer this question. I ask this question. Have you received since you have been commissioner in the

way of a present, directly or indirectly, from any canal contractor of this State, any sum or sums of money? A. I decline to answer it on the grounds I have given; that I will answer no questions pertaining to me personally until I have had an opportunity to examine the evidence.

Q. Do you think it is necessary for you to read this evidence in order to be able to tell whether you have received money from contractors? A. I do not.

Q. Then why do you put it upon any such ground? A. Because I hold it is my personal right as a person implicated to know what the testimony is, and a right to be heard.

Q. What makes you think you are implicated? A. Because I don't know, I propose to know.

Q. If you have never received any money, have you any reason to suppose you are implicated? A. I don't suppose I am implicated.

Q. Now, sir, I will put the question again. You know whether you have received money from contractors or not? A. Most assuredly.

Q. Is it necessary to read a thousand pages of evidence in order to answer that question? A. I don't decline to answer this upon that ground, but upon general grounds.

Q. What grounds? A. Any questions relating to me personally, I propose to know what the testimony is that I may know whether I am implicated in any way or not. I propose to answer all questions as a witness, but none as an accused.

Q. Will you answer the question whether you have received any sums of money, from any contractor, as a present, since you have been a canal commissioner? A. I shall answer it in no other way than I have stated to you. I answer, as a general proposition, that I have received no money from contractors for services done—for services to be performed; I won't enter into specific details until I understand my position.

Q. I understand you to say that you have received no money as a consideration for work being done? A. For services of any kind.

Q. Have you received any money, by way of presents, directly or indirectly? A. I shall not answer any questions relating to myself personally.

Q. Have you received money from George Lord since you have been a canal commissioner? A. I shall refuse to answer all those questions.

Q. You refuse to answer that? A. Yes.

Q. Have you received money from Belden or Dennison? A. I refuse to answer.

I refer also to the testimony of E. T. Bangs, to show that he did make presents, and his reason for making them, and that if the contractor did not make presents he had better let contracting alone, for he could not live as long as the June frosts lasted unless he understood the ropes, and could use the money to get the work and carry it out after he got it. His testimony on that subject is as follows:

Q. Have you ever paid any money to any of the State officers in consequence of contracts or work? A. Yes, sir; a good many thousand dollars.

Q. Whom to? A. Well, I would rather not state about that.

Q. Have you paid money to more than one State officer? A. Yes, sir.

Q. How many in all? A. About three.

Counsel for the committee states to the witness that he deems it his duty to name the persons, that justice may be done to them and no injustice imputed upon others.

Witness states that he declines to state the names of the State officers, but does say it is more than three years since.

Witness. It is a universal practice among contractors; a man who don't understand contracting had better let it alone, for he could not live as long as a June frost, unless he understood the ropes and understood where to use money to get work and carry it out after he got it; it is a practice among all contractors to use money; you have got to use it; if you did not you could not live; I have had sections where I have had a double set of force put on over my work till I came down with a certain amount of money and then it was taken off; I have had \$4,000 to \$6,000 go through the auditor's hands, when he had no more right to pay it than he has to pay your individual bills, and perhaps take a year to pass it.

Q. Explain that? A. For instance on the Genesee Valley canal, I went on there and took section 2; I got the work fair and square, the lowest bidder; that was let under the know-nothing administration, Whalen was canal commissioner, Severance was engineer and Jake Mead his clerk, Kelley was superintendent, the man who went to the State prison for robbing the express down in Vermont; we went up there then to that section to start it, all in good faith and we found that the engineers and superintendent and collector—all hands—were organized to burst us on this section in order to get it into the hands of the superintendent for plunder. We went on with a good force, we bottoined the canal, they set on the engineers with the instruments and bottoined it right down; then they went on with the force and ripped up the trunks of the aqueduct, and finally I told Mr. Mead, my partner, "We have got to take another tack in this matter, you see how it is, we can't live; I will go down and see the commissioner." I went to Rochester, to the Globe Hotel on Sunday; looked at the register and saw Mr. Whalen's name recorded there; I turned round; there was only one man in the office, and I said, "Can you tell me whether Commissioner Whalen is round here?" He said, "I am the gentleman." I introduced myself, and he asked me up to his room; he had withheld our drafts; he had kept them all back for three or four months; I talked with him in a very mild, nice way; used all the ingenuity and tact I had to gain his favor to see where his weak points were; ordered up a bottle of Heidsieck wine, played know-nothing a little; finally I told Whalen "this thing is working so and so; we might as well come to the point; you can make as much money out of us as out of those fellows;" that kind o' tickled him; he went down and walked arm in arm up the street; we finally settled things; he agreed to meet me at Mount Morris at such a time; nothing was to be said.

I had hired a nice establishment up there and took him up, then the superintendent happened to

see us, and he notified him immediately to hitch up his team and we went through to Cuba; as we went through they made quite a to-do, the engineer got wind of it, and he got out and fired the cannons and made a general celebration; we fixed upon this, this expenditure, some 6,000 or 7,000 dollars; Whalen thought I had better pay him about 1,000 dollars of this expenditure; I told him I could not do that under the arrangement, the pressure was a little too heavy; says he "We will have to take five or six months to pass all this through, it is too large an amount;" he said "When you go back it will be a different state of affairs." From that time the superintendent never came on to our works or meddled with us; I was consulted always.

Q. How much did you pay him? A. I don't like to state that. This money which ought to have been paid by the contractor, was paid by the auditor; this \$6,000 or \$8,000 the auditor passed, and paid in some blind way.

Q. How was it passed? A. The vouchers were sent in and fixed up and the auditor consented and fixed them in some shape to made it appear upon its face that it was all right and that was all passed. It took all that summer before the men were all paid; we had to take it out in installments; they said the amount was too much; everything was made easy, and I had all the extra work wherever I could make money out of it. That year we had \$13,000 for doing the work, and we made a dividend of \$16,000 by the extra work, over and above all expenses.

Q. In a single year? A. In a single year.

Q. Who was auditor then? A. Mr. Benton; Hugh Severance was engineer and he would ask me how much money I wanted, and he would make out the estimate accordingly.

Q. Did you pay Severance any money? A. No; he had to do as I said, then.

Q. You had got beyond him? A. Yes, sir.

Q. Now I think you should name the State officers whom you have paid money to? A. I would not like to.

Q. Did you ever pay General Bruce any money? A. No, sir.

Q. Have you ever paid Auditor Benton any? A. *I don't want to answer that.*

Q. Have you ever paid Mr. Goodsell any money? A. *I won't answer that question.*

Q. Have you ever paid Mr. Alberger any money? A. No, sir; never had any work under him.

Q. Have you paid Mr. Dorn any money? A. *I should not want to answer that.*

Q. Have you ever paid Mr. Skinner any money? A. *I should not want to answer.*

Q. Have you ever paid Mr. Jenne any money? A. No, sir.

Q. Have you ever paid Mr. William H. Gere any money? A. No, sir, not that I remember of; he never had anything much to do with the canal; I never paid Mr. Dorn any money while he was acting as canal commissioner.

Q. Did you ever pay him any money while he was superintendent? A. I don't think I ever paid Mr. Dorn any money for anything in his official capacity.

Q. What was it for? A. I decline to answer.

Q. Have you ever done any work under him as superintendent? A. Yes, sir.

Q. Where? A. On a section on the Erie canal.

Q. You had a section and he was superintendent over you? A. Yes, sir.

Q. Did you ever pay Mr. Fitzburgh any money? A. No, sir.

I also refer to the testimony given by Canal Commissioner William I. Skinner, who when he was inquired of, was willing to give a full answer, taking a different stand from Messrs. Bruce and Alberger, that he had not received any money or any present, except as follows:

Q. Were you presented by any one with a carriage? A. Yes, sir.

Q. Who presented it? A. In January or February, after my term of office expired, Mr. John Hosch came to my house and said that my friends wanted to present me with a carriage—make me a present; I told him I had rather he would not; 'Well,' he said, 'we never have given you anything or done anything for you, and we would like to give you a carriage, or something in that form, I can't tell exactly the words; I was sick in the house; I told him, 'I had rather not; I am afraid by and bye something will come up; I don't want the carriage, I can buy one for myself;' well, he said, they meant to do it, and the carriage came there in the summer following, along, I should think, four or five or six months after.

Q. Do you know who the persons were? A. I do not, except what Mr. Hosch told me; I never asked, for I never really liked it.

Q. You have never used it? A. No, sir.

Q. Did you receive any money from the contractors? A. No, sir; I never received a dollar in the world.

Q. Directly or indirectly? A. No, sir.

Q. Or any other presents while you were commissioner, from contractors or canal men? A. I got a chair that was sent to me.

Q. Anything of considerable value? A. No, sir.

Q. You never were paid money by them? A. No, sir.

Mr. AXTELL—Will the gentleman permit me to ask him a question. Are these facts that you are putting before the Convention denied by any class of persons?

Mr. BARNARD—That is more than I can tell. I have not conversed with every member in the Convention on the subject, and I am not able to say whether they are denied, but I take the liberty, as a member of this Convention in raising this question, to state what is given in evidence, and if any gentleman chooses to deny it he will have an opportunity to do it; and if I have not given a proper coloring to the evidence, I can be corrected by gentlemen succeeding me. Now, we see evidence of at least one case of presents being given to the officers of the State, and I always consider that this is a very dangerous practice. I would always be willing to pay a salary to public officers sufficient to compensate them for the honest discharge of their duty, and an officer, as a matter of credit to himself, should steadily refuse any attempt to bias his action in

any way by the receipt of presents. When I see officers of any kind engaged in the performance of a public duty, accepting presents, wearing and using these presents, I cannot help thinking that they are of the same character as the ornaments we see worn by the courtesan, every jewel pointing to some departure from virtue and every trinket indicating some triumph of crime. The rule of the canal board in regard to these technicalities, erasures, stamps, etc., as shown by Auditor Benton, have always been found to work against the interest of the State. I give his testimony:

"Q. Will you read the rule of the contracting board with regard to the formality or informality of bids, and state the object of it? A. The object of it is to meet a difficulty we have encountered and always will encounter:

"The board require that all bonds and proposals, together with the acknowledgments, certificates, affidavits, etc., accompanying the same, shall be complete in every respect before being received and opened by them, and all that are not thus complete will be rejected. Any alterations or corrections must be noted before signing; said note or explanation must be full and explicit, and must be signed by the officer taking the acknowledgment; it must also state that the said corrections were made before signing, or, if after signing, were made with the full knowledge and consent of all the parties signing said instrument."

Q. Is that all there is about it? A. There is one more which precedes this:

"Contractors will be required to affix revenue stamps to their proposals and bonds accompanying the same, as follows: Proposals five cents each; five cents for each certificate from the officer administering the oath; the bonds shall have a stamp of twenty-five cents, and on the affidavits and the annexed certificates a stamp of five cents each."

Q. What is the object of that? A. The object was to have the contracts on which the board might act valid. That is, there should be no alteration or interlineation which would invalidate the contract, so that the parties might say, or the bail might say, "That has been changed since I signed it." Mr. Mitchell understands the object of having a perfect instrument to act upon in the future, to hold the parties to it.

Q. I suppose the object is to benefit the State? A. Certainly.

Q. Will you state, then, how it happens that all the informalities and irregularities are for the disadvantage of the State? A. I cannot tell why that should happen.

Q. Did you ever know one that operated to the advantage of the State; is it not always the fact that it is for the disadvantage of the State where they are rejected for these exceedingly small informalities? A. I presume it is for the disadvantage of the State.

It is proper to state that in reference to this rule that the Legislature last winter corrected this action of the canal contracting board so as to allow contractors to correct their bids, so as to remove these technical objections. It is also given in evidence that canal officers have resorted

to the practice of borrowing money from the contractors, and I refer to the testimony of Daniel C. Jenne, one of the engineers in charge of the Champlain canal. He swears that he borrowed \$4,000 of Willard Johnson, one of the contractors on that canal, in the month of September, 1866. This loan was secured by Jenne's note, without any other security, payable in one year. This Johnson has been complained of as one of the contractors who neglected to keep his contract. The committee put certain questions to Mr. Jenne which elicited some very significant answers:

"Q. Do you consider it entirely proper that you should borrow money from the contractor, Mr. Johnson, and put yourself under obligation to him, holding the official relation to him and to his work that you do? A. I consider that as a matter between Mr. Johnson and myself, and having no effect upon me in any way, or shape, or manner in the discharge of my duty.

Q. Therefore you consider it proper? A. Yes, sir; so far as that is concerned it would make no difference in my action.

Q. Do you believe if you should now recommend taking this contract away from Johnson, and the canal board should take it away from him, you would be compelled to pay that money with any more severity than you otherwise would? A. Very likely I would; I don't know.

Q. Do you believe you would stand as good a chance to borrow again if you wanted to? A. I don't know with regard to that.

Q. If you should now certify in such a manner as to take this contract away from him do you believe he would feel like indulging you and giving you time for the payment of that money? A. I don't know.

Q. What is your belief? A. It is a thing that has not occurred to me at all.

You can easily perceive the danger there would be to the interest of the State from a practice of this kind. Now, it may be said that this is the system of getting work done by contracts that produced so much evil. Well, then, one other system would be the hiring of persons to do work, and of making the purchase of materials by the members of the canal contracting board. We have a case in the testimony of Mr. Hathaway, showing the conduct of one of this canal board, Mr. Dorn. He was engaged by Mr. Dorn to purchase an old canal-boat, to be used for repairs upon the canal. His testimony upon that subject is as follows:

Robine Hathaway, being duly sworn, testified as follows:

By Mr. Smith:

Q. What is your age and occupation? A. I am forty-seven years of age; I don't know that I have any occupation at all.

Q. What was your business when you last did business? A. I am an alderman of the city of Schenectady; that is all the business I attend to.

Q. What is your residence? A. Schenectady; being alderman is no business at all.

Q. What do you know in reference to a transaction in reference to a State boat? A. I think it was three years ago last August—it might have been July; I bought a boat of John Taylor's Sons at their brewery.

Q. What kind of a boat? A. It was a scow boat.

Q. A canal scow? A. Yes, sir; I sold it to the superintendent of the canal for a gravel boat.

Q. Who was superintendent? A. Robert C. Dorn.

Q. He was superintendent at that time? A. Yes, sir.

Q. What then? A. I bought the boat and took her to the upper aqueduct and put her in shape for a gravel boat; I put a gravel deck on her; after the boat was all ready for the canal, I went there for my pay; Mr. Dorn paid me for the boat.

Q. Go on. A. After that, I don't recollect how many days, Mr. Dorn spoke to me said that he thought I ought to have a little more; he said some one ought to have something in the matter. and in consequence of that the old voucher was torn up and I signed a new voucher and he paid me again.

Q. How much did he pay you the first time? A. Somewhere in the neighborhood of \$1,275.

Q. You gave him a receipt? A. I gave him a voucher for it.

Q. At that time what was the fair value of the boat? A. The boat at that time was probably worth \$1,400. He and I had some words about the price on account of my telling him that I could sell her for more money than he would give for her—that I had been offered more money than I had agreed to let him have the boat for.

Q. The price at which you were to furnish the boat was fixed at the time you bought the boat of the Taylors? A. No, sir, it was not fixed, but I was to let him have the boat.

Q. When was the price fixed? A. At the time he paid me.

Q. He paid the full amount agreed upon? A. Yes, sir.

Q. How long was it after that that he made the proposition to pay more? A. I cannot say—it might have been three or four days or it might have been longer. It is a long time now and I cannot bring it to mind.

Q. Did that proposition emanate from him without solicitation on your part? A. Yes, sir. I did not say anything about it.

Q. It was purely voluntary? A. Yes, sir.

Q. Relate as nearly as you can the conversation in which he suggested the making of a new voucher and increasing the price? A. He said that some one—I do not say who it was, because I do not recollect, but at the time I supposed he alluded to Mr. Skinner—ought to have something in the trade; I supposed he alluded to Commissioner Skinner.

Q. He said some one and named him? A. I don't recollect whether he named the one.

Q. He said that he ought to have something in the trade? A. Yes, sir.

Q. Then what else did he say? A. He did not say anything more to me, but I was perfectly willing—

Q. Did he say he wanted to pay more? A. He proposed to tear up the voucher, and that I should give a new one.

Q. You gave him a voucher? A. Yes, sir; I did.

Q. And he tore it up? A. Yes, sir; he destroyed it, I suppose, in some way; I never saw it afterward.

Q. What did you do? A. I signed another one.

Q. For how much? A. I think thirteen hundred and some odd dollars.

Q. Did he make any additional payment to you? A. No, sir, I did not get anything more out of it.

Q. How much, according to your best memory, was the second voucher more than the first? A. I should think about \$50, but still I cannot certainly say, it is so long ago; I cannot recollect the exact amount.

Q. Was anybody present at this transaction? A. I rather think not, but there might have been; I think it was in his office, but I do not recollect whether anybody was by or not.

Q. His office, where? A. In Schenectady.

Q. How much did you give the Taylors for this boat? A. I think \$785.

Q. How much did you expend in repairs of the boat? A. I think in the neighborhood of \$100; it might have been a little more; I think it was a trifle over one hundred.

Q. Did Mr. Dorn know the price of this boat before he purchased it? A. Yes, sir.

Q. Did you go at the request of Mr. Dorn to purchase it, the price being known? A. I rather think I did.

Q. With the understanding that he was to allow you a larger price? A. He was to pay me for fixing her up.

Q. Was he not to pay you something more than the cost? A. I cannot say whether there was anything said about it at that time or not.

Q. How much did you realize out of the first voucher? A. I got \$100.

Q. For your share? A. Yes, sir.

Q. One hundred dollars more than the value of the boat? A. That was the money they paid me. Q. It cost \$975, and you received a voucher for \$1,275? A. Yes, sir.

Q. Did you pay back any of the money you received to anybody? A. No, sir. I signed a voucher for so much money, and as near as I can recollect, they paid me \$100 over and above the cost price.

Q. Did they give you the full amount of the voucher? A. No, sir.

Q. The boat cost \$975, repairs and all? A. I think so. I may be mistaken.

Q. How much did they pay you? A. I think they paid me in the neighborhood of \$1,250.

Q. In money? No, sir. I signed the voucher and got \$100 more than actual cost.

Q. You say the boat cost \$975, with repairs? A. Yes, sir. I think that was it.

Q. And you got \$100 more than that? A. Yes, sir.

Q. That would be about \$1,075? A. Yes, sir.

Q. That was all that was paid to you? A. Yes, sir, that was all I got.

Q. And you gave a voucher for how much? A. I think the voucher was for twelve hundred and some odd dollars.

Q. Did you pay the money for this boat yourself? A. Yes, sir.

Q. Did not Mr. Dorn say to you, "Partner?"
A. That is an expression he used frequently.

Q. Didn't he say, "Partner, there is another man that must have a portion of this money?"
A. He said that some one, I forget now who, but my idea was that it was Skinner, but at any rate he said some one ought to have a little more.

I will state further that it appears in the testimony of another witness that while work was done by men employed under some of the engineers on the canal, the men who received the money for work were asked to give receipts signed by them, but the amount was left in blank, and he could give no other reason why that was required, except when the vouchers went in, more money was put in them than was actually received by those who signed the papers. I will state further, that the canal commissioners sometimes have very good friends. I will refer to the testimony of Mr. Halsted, an editor of a newspaper in Syracuse, which is as follows:

D. J. Halsted, sworn and examined by the counsel:

Q. Where do you reside? A. At Syracuse.

Q. What is your business? A. I publish the Courier.

Q. Do you remember the election when Gen. Bruce and Mr. Wright ran for canal commissioners after Mr. Bruce's first election? A. Very well, sir.

Q. Do you know where section 9 is on the Erie canal, running west from Syracuse? A. Yes, I know what they call section 9.

Q. Do you remember the fact being more or less talked of, in reference to a contract being drawn up, and that section being let by Mr. Bruce for repairs, in the spring of 1861? A. I heard talk of that kind.

Q. For Mr. Belden & Co. to put it in condition to open the canal, as you understood? A. Yes, sir.

Q. During that canvass in the fall, was there an article prepared with a view to publication in your paper, in reference to the letting of that work in the spring? A. There was an article prepared for the Atlas and Argus which we were to copy—

Q. Who prepared that article? A. That I do not know.

Q. Who spoke to you about it? A. I think Wright spoke to me.

Q. The candidate upon the democratic side? A. Yes, sir.

Q. Was it on the subject of the General's management of the canals during the time he was in? A. Yes, sir.

Q. And upon the amount of money that had been expended on that section? A. Yes, sir.

Q. Did you publish it? A. I did not.

Q. Did the Argus publish it? A. I did not see it in the Argus.

Q. Do you know Austin Myers? A. I do.

Q. Did he pay you any money for not publishing it? A. He did.

Q. How much? A. A thousand dollars.

Q. How long was that before the election? A. I could not say now—I should think it was, may be, six weeks; I could not say for certainty; it was about the middle, I should think, of the canvass.

Q. What year was that? A. In 1861, I think, there were three candidates running.

Q. Bruce, Tallmadge and Wright were running? A. Yes, sir.

Q. It was when he was nominated after his appointment by the Legislature? A. Yes, sir.

Q. You understand that that article charged that there had been more money paid for repairing that section than was right? A. Yes, sir.

Now, when I refer to cases of this kind, I may say that in regard to this particular case, as in case of every picture, there is a bright side as well as a dark side. The dark side was, that it became necessary for General Bruce or his friends to endeavor to corrupt the public press at a time when he was a candidate for office, in order to prevent a revelation of his doings as a canal commissioner, while, if his actions complained of had been in the interest of the State he need have no fear of any exposure or any publicity being given to them. That is the dark side. The bright side illustrates that even in matters of this kind connected with canal frauds, there can exist true friendship. We have many instances in poetry and history of true friendship. We have the friendship of Jonathan and David. We have the friendship of Antonio to Bassanio. We have the friendship of Damon and Pythias, and now we have recorded on the testimony of this Convention the friendship of Myers to Bruce! Not only is the State defrauded by the action of the canal contracting board, but we find cases, in consequence of the ownership and the management of these canals, on the part of the State, that claims may be presented to the Legislature and the Legislature may pass laws authorizing their auditing and their payment, and even then that the State may be defrauded by the testimony of false witnesses. I refer to the testimony given in regard to the case of Clark Snook. Clark Snook, in 1861 had a contract to repair section 3 on the Chenango canal. He made a claim against the State for damages done to his section by the high water in March, 1865. His contract price for keeping the section in repair was \$7,000 a year, and under the general law afterward increased to \$10,700. His contract was that if a break exceeded \$4,000 the State had to pay after that, half the expense. An act of the Legislature was procured in 1866 authorizing the canal board to hear and determine the claim, and if the damages resulted from causes beyond the control of the contractors, and without fault or negligence on their part, they should award such sum as was actually expended by the contractors, after deducting payments, but the award not to exceed \$40,000. The canal board appointed a committee to take evidence, consisting of Lieutenant-Governor Alvord, of Syracuse, Messrs. Bruce and Goodsell. The committee awarded the full sum of \$40,000, which the auditor paid. This would have been a good thing for Mr. Snook, but his contract was interfered with, according to his statement, as follows:

After I got through the work, I don't know much about it after that; it never came into my hands and I don't know what became of it; I never got anything from it since. Dr. Dennison and Candee were partners in this contract with

me; the bill was in Snook and Beebe's name. Mr. Beebe came to me and he wanted to buy the section they had been letting here; I never had had any work on the canal then, and I told him I did not want to, that I had my mills to see to; he said, "You have a son, then, can go on with me, and he can do the work." Dennison said I could make \$10,000. I said it was doubtful, but Mr. Beebe being an old contractor I trusted to his judgment.

Q. You did take it? A. Yes.

Q. Dennison was equally interested. A. No I was going to tell you; Mr. Bruce was canal commissioner then, and the section was in very bad condition; well, we ran along that season, we laid out a good deal of money—more than we got for the work—and the next season Mr. Wright came in and he did not like it.

Q. How long ago was that? A. That was in 1862, I think; Mr. Wright told them down there he would drive us off, that we were two black republicans and he would not have us, and he went at us and got us in debt.

Q. Did you hear him say that? A. No.

Q. Did you ever hear Mr. Wright make any such remark? A. He said one of us had to go out.

Q. Did he claim you had not done your work? A. Yes.

Q. He wanted you should get some other man with you? A. Yes.

Q. That had experience, or money, or what? A. No; he said there had got to be some democrat, that he did not want two black republicans; Dr. Dennison did not take an assignment then, and not until after I got this award through the Legislature, although he had made an agreement.

How much evidence was taken does not appear, except the following:

Q. Where was that case heard? Where was the evidence given? A. I can't tell you.

Q. Were you not sworn? A. I was sworn down to my house.

Q. Who was the committee that came to your house and examined you? A. Thomas Alvord and Frank Hiscock.

Q. They were the committee appointed by the canal board? A. I believe Mr. Alvord was the committee.

Q. Hiscock was counsel? A. Yes.

Q. Before you were sworn did you have any conversation with either of them? A. No, sir; I had not seen Mr. Alvord at all.

Q. Did they immediately proceed to take your testimony after they came there? A. Yes, sir.

Q. Without any consultation with you beforehand? A. Mr. Alvord never did.

Q. Did you ever have any conversation with either of them before you gave your evidence? A. I did not, sir.

Q. By whom were you sworn? A. Mr. Alvord.

Q. Who took the minutes of your examination? A. Mr. Alvord.

It appears that he made an agreement with Dr. Dennison of Syracuse, and others, to pay 20 or 25 per cent to get the bill through, and the award paid. The parties that he was thus compelled to

assign to get all of the \$40,000, and Snook appears to have done all the swearing of the parties in interest, although Horace Candee was his partner in interest. Candee swears he procured evidence to be given, but was not present when any was given. The money has been paid by the auditor. Candee obtained from Snook a paper securing his share of the \$40,000 and Dennison's share, and Snook has received no money at all under the award. Whether there was, in point of fact, any fraud in that transaction does not appear, because the committee did not fully go into the testimony. But the next case I refer to is the De Graw matter, where fraud was clearly proved. In 1864 there was a great flood. C. H. De Graw had some timber near the village of Corning, about half a mile from the mouth of the canal, for the purpose of entering into the canal. Some of it was carried down the river by the flood. John A. Robinson, a partner of De Graw, testified: "My honest opinion is that the loss does not exceed \$6,000 or \$5,800. De Graw presented a claim against the State for damages, for the loss of the timber. On 7th December, 1865, he made an agreement with James J. Belden, of Syracuse, that Belden should loan and advance such money as was necessary to procure and produce evidence to substantiate the claim, Belden to have a lien on any award made for advances, and for compensation for his services. Belden claimed for advances and services, \$3,000. A law was passed referring the matter to the canal board. The canal board referred the matter to the Lieutenant-Governor (Alvord), State Engineer Goodsell, and Commissioner Bruce, who made an award of \$24,000. They went out on the ground and took evidence. The subsequent history of the case is told by Nathaniel S. Benton, the auditor:

Q. Where a law is passed like that, how is the money raised to pay it? A. It is raised by tax.

Q. It has to go into the supply bill? A. It has to go into an appropriation. No, it don't go into the supply bill; it goes into an appropriation.

Q. What do you call this appropriation? A. Appropriation for canal damages. Whenever there is a special law passed for damages of that character, after the report is made the Legislature appropriate the money and put it in the appropriation bill. The special law in all these cases reads in this way: "The Treasurer shall pay on the warrant of the auditor, out of any moneys in the treasury, appropriated or to be appropriated for canal damages." That is the way all these laws read.

Q. The Legislature, then, appropriates the money? A. Yes; the Legislature appropriates the money.

Q. Do you know the fact that there was a provision in the supply bill or the appropriation bill in the last Legislature, inserted to pay Mr. De Graw? A. No, sir; it was not inserted. It was stricken out.

Q. You know that awards were put in? A. Yes; all these awards were put into the bill that passed this winter; but the Senate Committee struck it out, and the Conference Committee struck out De Graw's.

Q. Do you understand the reason why it was stricken out? A. Nothing, unless general rumor.

Q. What was that general rumor? A. That there was something wrong about it.

Q. Therefore you understand that it was stricken out from the Senate bill by the Committee of Conference? A. Yes; I know that it was stricken out.

Q. Did you hear it alleged that this committee had reported four or five times more than the actual damage was to De Graw? A. No: I only heard the general rumor, rumor to that effect; I understood at some time or other, I cannot say when, that the actual damage amounted to some few thousand dollars.

Q. What did Mr. De Graw get, after the canal board allowed him that claim? A. He got a draft on me.

Q. By whom? A. By the canal commissioner.

Q. Who was he? A. General Bruce, I believe, was the canal commissioner then.

Q. He issued the draft on you? A. Yes, I think so; I cannot be certain; because sometimes we pay these canal board awards what we call across the table, not authorized by law; at other times we pay them on the canal commissioner's draft; whether that was paid across the table or by the draft I cannot tell.

Q. Have you paid that award? A. Yes.

Q. When did you pay it? A. I do not remember now when it was paid, I cannot tell here.

Q. Did you pay it after it was struck out of the Senate bill? A. It may be; it may be I paid it after,

Q. Don't you think you did? A. I have not thought anything of the sort; I am not going to implicate myself by any thoughts.

Q. I only want to get at the facts. A. You shall have the facts.

Q. Don't you know you paid it after the Senate Committee struck it out? A. No; I don't know.

Q. Don't you believe you did? A. I am not going to say that; I will tell you exactly when it was paid according to the books in the office; I am not going to tell you anything outside of that.

Q. Do you know the officers of the Merchants' National Bank in this city, who is the cashier? A. Mr. Wendell, I believe; I believe I know him; he is the only man I know.

Q. What is the date of that payment? A. [From minutes from the auditor's office.] The De Graw award was \$24,000, the interest was \$291.95, making a total of \$24,291.95, and it was April 19th, 1867. I guess it was after the Legislature adjourned and after that bill was passed.

Q. There was no bill passed by the Legislature authorizing the payment of this money? A. Yes, sir.

Q. The De Graw award? A. Yes, sir.

Q. What bill? A. The bill of 1865.

Q. After that? A. No, sir.

Q. Do you know Mr. J. J. Belden? A. I know Belden.

Q. Do you know that he was interested in that award? A. I don't know but the award was paid to him.

Q. Didn't you understand that Mr. Belden had an assignment and an interest in that award? A. I don't know about the interest; I understood he had an assignment, and I rather think the award was paid to him. That is my impression about it. Q. Was it not paid at the Merchants' Bank? Did not Mr. Belden leave it there? A. I cannot tell you that outside of the record.

Q. The record would show that? A. The record would show that.

Q. What authority had you to pay that until the Legislature had appropriated the money? A. I told you that it was appropriated in the act of 1865.

Q. Then why was it put in and struck out of this bill? A. I cannot tell you.

Q. Didn't they put into this bill all the damages of a similar character? A. Yes, all but this.

Q. And the rest all passed? A. Yes.

Q. This was the only one that was struck out? A. This was struck out; I don't know the reason for striking out.

Q. Were not these awards put in from the report from your office, giving memoranda of what to put in? A. Certainly; I drew the bill myself.

Q. You reported this award as well as the balance of the awards? A. Certainly.

Q. After it was struck out you went and paid it? A. I paid it after it was struck out by the Senate Committee; but whether it was before the bill passed or not I do not know.

Q. You paid it after you had heard that it was claimed that it was fraudulent? A. Yes, sir.

Q. Do you think you did right? A. Yes, sir; it was perfectly legal.

Q. Do you think, after you had been informed that the Senate had stricken out the appropriation of that amount for the reason, as it was alleged, that it was fraudulent, that you did right, having that knowledge, in paying that draft? A. No matter what my knowledge was, there was the law to authorize it.

Q. Do you think you did right as a public officer? A. Yes; because the Legislature did not do right in not repealing the act, as I asked them to do.

Q. You were not compelled to pay it? A. I would be compelled by a *mandamus*.

Q. Why? A. Because there was the appropriation.

Q. Suppose they had come with a *mandamus*, and you had shown it to be fraudulent, would not that be a defense? A. No, sir.

Q. Would not that be a perfect defense? A. No, sir; look at the law, and you will see that it would have been no defense at all.

Q. Did Mr. Belden make any agreement with you, that if you would pay that award he would indemnify you? A. No, sir.

Q. Did he urge you to pay it? A. He asked me if I would not pay it.

Q. Didn't he tell you at the time that the Senate had stricken it out, and that the State was attempting to get rid of the payment of it? A. No, no; I didn't have any such conversation with him as that; he asked me to pay it.

Q. If you had known that that claim was repudiated five times what the actual damages were,

fraudulently, and as you did know that the Senate had stricken it out, and refused to appropriate money for it, would you still have paid it? A. Certainly I should.

Q. You would? A. Yes; if I was authorized by the Legislature to pay it. I would have paid it.

Q. If you had known that? A. What had I to do with that? I had no right to look behind the award. That would have been no defense to me under a *mandamus*.

Q. Did you believe from the Senate's striking out this appropriation, and from what you heard about, that it was a fraudulent award? A. I believed there was trouble with it; I never inquired about the particulars of the award.

Q. Did you believe it was a fraudulent award? A. I believed there was trouble with the award. As to allegations of fraud and all that sort of thing, I believe from what was said that there were allegations of fraud. Intermediate, in the same bill, they struck out another appropriation in the Senate, to a man up at Rochester, for the work on the creek at Mills; and they repealed that law. When this question came up, I said to them, repeal the act of 1866, and the money cannot be paid.

Q. To whom did you say that? A. I said it to the committee; I was a whole half day up there before the conference committee.

Q. Did you ever pay on any other occasion an award for canal damages, after the appropriation was stricken out by the Senate or by the Legislature? A. There never was one stricken out before.

Q. Did you ever have a case of the kind before? A. No, sir; because there never was one stricken out.

Q. Does it appear that there was any funds to pay this? A. Yes; there were funds appropriated.

Q. What power had you to pay this under the law at all?

The law for the relief of Charles J. DeGraw, passed June 21, 1866:

"Section 2. The Treasurer shall pay on the warrant of the auditor of the canal department of the State, to Charles J. DeGraw, such sum, if any, as may be awarded to him under the provisions of this act, out of any moneys appropriated or to be appropriated for the payment of canal damages."

Q. What right, under that law, after the appropriation had been stricken out in the Senate as fraudulent, had you to pay Belden or anybody that money? A. There was money in the treasury appropriated for the payment of canal damages.

Q. What authority had you, as auditor, to pay it? A. I did not pay it; I drew the warrant under that act.

Q. Who did pay it, in fact? A. I drew the warrant on the Treasurer, and the Treasurer drew his check.

Q. Then the Treasurer paid it in this particular case? A. He drew his check on the auditor's warrant.

Q. Is that the way it was done; that you drew the warrant on the Treasurer, and he gave his check and paid the award? A. Yes, sir.

Q. Who is the Treasurer? A. Mr. Howland.

Q. When did he give that check? A. He gave it the same day, the 19th; there was money in the treasury at that time that had been appropriated for the payment of canal damages; and that law reads 'to be paid from any moneys appropriated or to be appropriated.'

Q. Was there enough to pay all the canal damages? A. Not all the canal damages.

Q. All that was then awarded? A. No, sir.

Q. Then you gave the preference to this? A. No, sir.

Q. There was not enough to pay all, you say? A. There was not enough to pay all. I do not understand what you mean by 'preference.'

Q. Then you paid this when you could not pay all? A. I would pay until I exhausted the appropriation; whoever came first would get it.

Q. In the order in which they came? A. In the order in which they came.

Q. Was not this paid when others had applied? A. No, sir.

Q. And been refused for want of funds? A. I believe not.

Q. Are you confident of that? A. I am pretty confident of it, because it was understood that means were to be raised out of the bill that you had passed for the payment of them.

Q. Had not awards been previously refused or declined payment, on the ground that there were no funds, and that this act was necessary? A. No, sir; that was not exactly the point.

Q. State the grounds upon which awards had been declined payment before the DeGraw award was paid. A. I do not know that there was any award declined payment of that class; there was one class of awards that were paid out of the appropriation for the ordinary repairs of the canals, that is one class; then there are another class that are paid out of appropriations made for the payment of canal damages; I do not think that no single antecedent award, antecedent to this that we are speaking of, payment was declined; because if it had been there could not have been money in the treasury.

Q. By antecedent do you mean antecedent in the order of making the award, or antecedent in the time of requesting you to pay them? A. Antecedent in the time of the date of the award.

Q. Then you did not pay them in the order of their requesting you to pay them? A. Wait a minute; I have not said so. I say we do. But you are getting two ideas connected together.

Q. By antecedent then, you mean antecedent in the order of the date of the award? A. Yes, sir; I say none of these were refused as presented.

Q. Where there was a special law of the Legislature, appropriating for damages like those of DeGraw and Selye, did you in any case pay the awards made by the canal board until after the money was raised by the appropriation by the Legislature? A. I did not pay the awards when there was no appropriation.

Q. You caused this, together with other awards, to be put into the appropriation bill, and you were present and directed the committee what you wanted? A. No, sir; that is not the way it was.

Q. You recommended them to be put into the

appropriation bill? A. This is the way it was: Mr. Littlejohn called on me for a report, and I made it. The canal committee in the house called upon me to draw a bill, and I drew it. I insisted in that report that a class of these claims were payable out of the ordinary repairs of the canals, I insisted that others were not, under the Constitution, a charge upon the ordinary repairs of the canal, and this law raised the tax for the purpose of paying them; this award among others.

Q. Had this not been struck out you would not have it until the money was raised? A. Yes; I should until I had exhausted the appropriation that was in the treasury.

Q. When you believe by the Constitution that it ought not to be paid out of this fund, you had got the law passed? A. It is paid out of that fund. I ascertained, in writing up the books, that there was a balance in the treasury which had previously been appropriated by the Legislature, raised by tax for the payment of canal damages. There was a balance in the treasury. We wanted more money for the purpose of paying the awards made in 1866. I then grasped the whole of the awards together, and put them into the bill.

Q. Would it not have been wrong to take the money on hand liable to pay others? A. It was not liable to pay others.

Q. Then if it was not liable to pay others, you did not need this money, if you had enough to pay them? A. I had not enough to pay them.

Q. Then it was not wrong to take the money in the treasury to satisfy the awards? this bill you got the Legislature to introduce, when it should have been paid to others? A. It was not to be paid to others. It was not appropriated to others.

Q. Then what was the necessity of the appropriation unless there were other claims that needed it? A. Suppose there were \$26,000 in the treasury before the appropriation, and that was all there was to pay these damages, which amounted to \$150,000. Didn't you want a further appropriation?

Q. That is the very point. If you had made provision in the bill for \$150,000, would you have paid any part of that until the money was raised by an appropriation? A. I would have paid any one until I exhausted the previous appropriation.

Q. Would you have paid any man that was in that bill to have money raised to pay him? Would you have exhausted the \$26,000? A. Yes, sir; what thought would I have to hold it back?

Q. That you would pay to the first man that came? A. Of course I would.

Q. Then why on earth, if that were so, didn't you make the bill less the \$26,000 that you had? Why put anything into the bill except just enough to pay, including the \$26,000? A. Perhaps the balance had not been written up.

Q. Haven't you refused, before that money was exhausted, to pay any money in that appropriation bill until the money was raised? A. I probably have; probably I have not.

Q. Didn't you before you paid the De Graw draft? A. I do not remember; I do not think I ever did.

Q. Are you sure? A. No, I am not sure; I do not think I ever did.

Q. If you did refuse to pay others in that appropriation, for the reason that they were in there, and you would not pass them until the money was raised, would you have any explanation how you came to pay De Graw's draft, when it appears from the records that it was fraudulent, and I think from the Senate bill? A. There is no such appearance.

Q. If you were satisfied that there was no appropriation made for it? A. That would postpone it a year.

Q. It would not be any worse for a fraudulent claim to wait than for a genuine one? A. Not at all; I agree to that.

Q. Did you know at this time how the De Graw award was divided—who had the money? A. I do not know anything about it; such things are not illustrated to me; they do not give me the particulars.

The committee of the Senate not being satisfied, had a further examination of Mr. Benton with the following result:

Nathaniel S. Benton, a witness, recalled, and testified as follows:

Q. Out of what fund was the De Graw claim paid? A. There is an appropriation act, chapter 85, Laws of 1866; it is the general appropriation bill to pay canal damages, passed March 6th, 1865; act, chapter 219, Laws of 1866; another appropriation act to pay canal damages, passed March 26th, 1866; then the act for the relief of Charles J. De Graw, chapter 903, Laws of 1866, passed June 21st 1866; now on examination I find there was a surplus of the appropriation act of 1865, and a surplus of the general appropriation act of 1866—a surplus out of both those general appropriation acts—after the paying of the awards named in the acts from period to period, out of which the De Graw claim, as I say, could be paid, and, as I say, was paid.

Q. Was any part of the De Graw claim paid under chapter 85, of the Session Laws of 1865? A. I can't tell now without going back and looking at the book to see what appropriation it is charged to.

Q. I asked you last night to give me the authority of law by which that was paid? A. Well I give you the authority there.

Q. I want to know what fund it was charged to, and what appropriation raised the money that paid it? A. I will send you back a memorandum, and you can put it down as my evidence; the answer will be out of one or the other.

Q. Under what appropriation was the award made by the canal board to Jarvis Lord for canal damages of \$30,000 paid? A. That was paid out of the ordinary repair fund.

Q. What is the date of the passage of the act to pay Jarvis Lord? A. The date of this act is April 23, 1867. Do you mean the original act?

Q. Yes. A. I guess that act was passed in 1866; I don't remember the date of the passage of that act.

Q. Was the act for the relief of Jarvis Lord passed June 21st, 1866, being chapter 900 of the Session Laws of that year? [Handing book to witness.] A. Yes the second section contains

this appropriation clause: "The Treasurer shall pay on the warrant of the auditor of the canal department such sum, if any, as may be awarded by the said board to the said Jarvis Lord or his assigns, under the provisions of this act, out of any money in the treasury appropriated or to be appropriated for the ordinary repairs of the canals."

Q. Was that paid under that section? A. Yes, sir.

Q. Paid under that section? A. Paid in virtue of that section.

Q. What was the date of that payment? A. The payment was made in December, 1866, I can't tell whether it was the 8th or the 6th. Now I have an addenda. This is the act 579 of the Laws of 1867, passed April 23d: "If any of the said awards shall have been paid to any of the said claimants from funds heretofore appropriated for the repairs of the canal, the sums so appropriated shall be retained from the money herein appropriated and restored to the funds from which such payment was improperly drawn, and the said money so paid into the treasury of the proceeds of the said tax or so much thereof as may be necessary is hereby appropriated and shall be applied."

Q. Did you draw that section? A. I did.

Q. For what purpose? A. I drew it in view of meeting that payment, and one or two others put in that schedule after the Legislature had got to my position, or the committee had, and that was that you could not pay any award where the Legislature had made a donation, waived the right of the State,—you could not pay them out of the ordinary repair fund.

Q. You have done so? A. I did in those cases, but the Legislature had not heretofore adopted my doctrine.

The witness withdrew and returned by messenger to the committee a memorandum, of which the following is a copy:

"De Graw's award was paid out of the general appropriation act, chap. 219, Laws of 1866."

Nathaniel S. Benton, being again recalled, testified as follows:

Q. By your memorandum you say the De Graw claim was paid under the general appropriation act, chap. 219 of the Laws of 1866? A. Yes. It is one of those three acts that I named here.

Q. Do you mean that it was charged to that appropriation? A. Yes.

Q. What section of that act is it that it was paid under? [Witness is shown chap. 219 of the Session Laws of 1866.]

A. Under section 2, paragraph reading as follows: "For awards made by the canal board, the contracting board and the canal appraisers, between the first day of January, 1865, and the first day of January, 1866, where the said boards have made awards for specific amounts with the interest thereon as now allowed by existing statutes, the sum of \$337,000, or so much thereof as is necessary for that object."

Q. You examined the books at the office and found it was paid under that act? A. The entry in the warrant refers to that act.

Q. Was that the act for the relief of Charles J. De Graw, chap. 903 of the Session Laws of 1866? A. Yes, sir; that is it.

Q. Was that law passed June 21, 1866? A. Yes, sir.

Q. Do you remember how long after that the award was made? A. No, I don't remember exactly, but the award was made along in the fall.

Q. Does the section you have cited, in the act of 1866, authorize the payment of any award made after January, 1866? A. Yes, sir; under the provisions of that other act; take the two acts together.

Q. Will you tell me how? A. Give me that De Graw act; "The treasurer shall pay, on the warrant of the auditor of the canal department, to said Charles J. De Graw, such sum, if any, as may be awarded him under the provisions of this act, out of any moneys appropriated or to be appropriated for the payment of canal damages." I think that is plain enough.

Q. But it is only for awards made by the canal board between January, 1865, and January, 1866—not for any others? A. Does it not read "appropriations made or to be made for canal damages?" If it was not already made it was subsequently made.

Q. Why did you insert the De Graw claim in this bill, as originally presented? A. Because I did not know at the time there was any surplus of that appropriation.

Q. How does a surplus of that appropriation enable you to make a payment to De Graw under that act? A. Because when I take up all I have already paid, and compute what there is to pay between those dates, I find there is a surplus.

By Mr. Mitchell:

Q. How much? A. Enough to pay that warrant.

Q. Do you say that the canal damages that were to be paid by virtue of section 2, of the Laws of 1866, chapter 219, that there was a surplus over and above the claims provided by that act? A. Yes.

Q. How much? A. Enough to pay that award.

Q. How much? A. I don't recollect precisely what it was; I asked the book-keeper about the first of April; I think that award was assigned about the first of April, or between the first and sixth; Mr. Wendell came to me and asked me when I would pay it; I told him I wanted to wait until that act was passed—the act of 1867, chapter 579; that I wanted to wait until then, because it was contained in that bill; then it laid along.

Q. Then the committee struck it out? A. The committee in the Senate struck it out of the act of 1867.

Q. What then did you do? A. It left the appropriation perfectly valid under the two previous acts.

Q. What I want to know is whether you can swear that there was any surplus over and above paying the awards that were provided for under section 2 of chapter 219 of the act of 1866? A. I should not have paid it if there had not been.

Q. Can you now swear there was? A. I can only swear what my book-keeper told me

Q. Have you examined personally to see whether there was any surplus? A. I have given you all the answer I can; I asked my book-

keeper, Mr. Southwick, 'how much have you paid out of that appropriation, or is there any balance applicable to that?' and he said 'yes.'

Q. Did you look any further, to see yourself? A. Of course not; the book-keeper reported to me, that after deducting the payments that had been made already under that section, and deducting the payments that were to be made between the periods there—the payments that were still to be made—there was a balance of the appropriation, I think he said, if I am not mistaken, of some \$49,000 or \$50,000. I asked him distinctly if there was enough to pay the De Graw award, and he said "yes." Now, if you want the fact about it, you must call on Mr. Southwick.

Q. How do you claim a surplus under section 2, when by the terms of the statute there was not any of it to be used or appropriated but for the purposes mentioned in the act? A. There is the answer, sir—the De Graw act.

Q. That \$337,000 is not appropriated unless it takes that to meet existing awards; there is not any surplus? A. But look at this act (De Graw act).

Q. I ask you to explain how you can say that there is a surplus under section 2, chapter 219 of the Laws of 1866, which can be drawn from by chapter 903, for the relief of De Graw of the Laws of 1866, when the sum mentioned in that section (\$337,000) is specifically appropriated, providing it takes that amount to pay certain claims mentioned in the act itself, and if it does not take that amount it is only as much as is necessary that is appropriated. How do you get at a surplus? A. Well, there are the facts; I have no answer to make.

Q. Don't you think, upon a more careful reading of this statute, that there is no surplus there which you were authorized to draw from? A. I have told you I have no answer to make; you have got the facts.

Q. I will ask you this question: With these two statutes now before you, do you not say, upon a careful reading of the statute, that there was no fund out of which De Graw's claim could be properly paid? A. I decline answering the question.

After the witness had returned to his office, the following question was sent in writing, by the clerk of the committee:

"Question to the auditor: Will you please furnish the date of the De Graw award and amount paid?"

CHARLES STANFORD, *Chairman.*"

To which the following answer was returned: "Amount paid, \$24,291.95, April 19, 1867. Date of award, December 6, 1866."

Nathan D. Wendell testified as follows:

Q. Are you connected with the Merchants' National Bank of this city? A. Yes, sir; I am cashier of it.

Q. Do you know Mr. James Belden? A. Yes, sir.

Q. Does he keep an account there? A. Yes, sir; J. J. Belden.

Q. Do you know about this award that was made to Charles J. De Graw for his relief? A. I collected it, that is all I know about it.

Q. Did you receive any paper from Mr. Belden or anybody? A. Yes, sir.

Q. What? A. Mr. Belden gave me the award with an assignment attached to it, and in addition to that a note from Mr. Benton, say that on such a day—I have forgotten how it was worded.

Q. Have you got that note? A. No; it went with the papers to the department, and it must be on file. I pinned the whole thing together when we collected it.

Q. He gave you what? A. He gave me a note, saying, 'I expect to pay this claim on the 15th of April next.' This was on the 10th of April, according to my books. On the 10th of April was the time the award was brought in with this note attached to it. I advanced Mr. Belden \$16,158.81 on the 10th day of April. On that award, on the 15th, the auditor agreed to give me a check right back on the bank—our bank being a deposit bank—one of the four banks having the deposits of the canal funds. On the 15th I went to the department, but it was not paid until the 19th. On the 19th the auditor gave me a check for it.

Q. Did Mr. Belden guarantee you in any way? A. No, sir; the only guaranty I had was the note from the auditor.

Q. Did he indorse it? A. No, sir.

Q. Did you ask him? A. No, sir; I simply took it because the auditor said it would be paid on the 16th.

Q. Had you ever heard that that award was fraudulent? A. No, sir; I never knew anything of that kind.

Q. You had not heard that the Senate was about to 'strike it out of the appropriation by reason of evidence that was brought? A. No, sir; never. If I had, I certainly never should have taken it.

Q. If you had believed it was a fraudulent award at the time you would not have taken it? A. No, sir; not without a guaranty.

Q. Belden brought you that note from the auditor? A. Yes, sir.

Q. And he left with you, also, the assignment from De Graw to him? A. No, the assignment was made directly to the Merchants' Bank, to us, as we had to collect it.

Q. From De Graw? A. From the State, the assignment was made to the Merchants' Bank.

Q. Who assigned it to the Merchants' Bank? A. I suppose De Graw—the parties who were interested.

The foregoing case illustrates: 1st. That money can procure evidence to substantiate false claims before public officers. 2d. That vigilant public officers may be deceived. 3d. That Benton was unusually zealous to pay. We claim: 4th. That the State ought to own as few canals as possible, to avoid large claims for damages by flood or other causes. Auditor Benton's conduct will be the last that I shall refer to in testimony. It appears that his conduct on that occasion exhibited unusual interest in behalf of the payment of the claims. He went before the committee of the Legislature to get them to put in an appropriation, and they struck it out. When that was abandoned before the Senate, he wrote a note to the cashier of one of the Albany banks, advising

him that \$24,000 would be paid at a certain time, and on the strength of that the bank makes an advance of \$24,000, and finally, after the Legislature refuses to make the appropriation, Mr. Benton, without any authority whatever of law for it, pays the money, and the State has thus been defrauded to the amount of at least \$16,000 by that operation. Now, it has been considered that the evils of this system grow out of the election system of officers. But the worst fraud that has been perpetrated under this system has been perpetrated through the connivance of Auditor Benton, and I do not understand that he is an elective officer. I understand that he is an officer appointed by the Governor by and with the advice and consent of the Senate.

Mr. M. H. LAWRENCE—What were the names of the members of the canal board who allowed the De Graw claim?

Mr. BARNARD—The canal board for the De Graw claim consists of the Lieutenant-Governor, State Engineer and Commissioner Bruce.

Eli T. Bangs, in his testimony says: That he had an arrangement with Whalen by which he bought a claim of Oliver Teal of Syracuse, against the State for damages for surplus waters that he had leased to the State arising from the building of the canal and the repairs. That Bangs engaged to try and get the claim through and get the money for it. That he came to Albany some time in 1857 or 1858 and saw Whalen and told him he thought there was money in it, and that money could be made by buying the claim. Finally Bangs bought the claim of Teal for \$5,000. He goes on to say:

Q. Then what move did you make next after you bought it? A. Well, sir, the papers were all fixed up and he gave me full power of attorney, and I told D. P. Wood, of Syracuse, what was up, that I had a pretty good thing, he was in our confidence, pretty close in our firm; I told him I wanted to argue it a little—wanted to make a kind of show before the canal commissioners, that I was going to make a proposition to take fifty cents on the dollar, with interest, that it was an old claim, taking the evidence on the part of the State; we figured it up and found it amounted to between \$17,000 and \$18,000; well, we argued it, we had an adjournment, we got the canal commissioners together, Whalen and Sherrill and Fitzhugh; Fitzhugh asked me if I had anything to say about the claim, I said I had said all I wanted to; the bill provided that the canal commissioners should make the award; I made arrangements with canal commissioner Whalen to offer this resolution, and he offered my proposition giving \$17,482.91; to the best of my recollection that was the amount.

Q. Did he offer it? A. He did; and Sherrill and Whalen voted for it; and Fitzhugh voted against it; and Fitzhugh slapped his hand down on the table and said it was all wrong, and went out.

Q. Well, it was carried in that way? A. Yes, sir.

Q. You got this award from the board? A. Yes, sir.

Q. Who argued that before the commissioners for you? A. We did not have much; we had

the thing all fixed, so we did not want any argument.

Q. This award was made in pursuance of an act passed when? A. About 1825 to the best of my recollection—an old act.

Q. What did you next do after you got your award? A. Of course I did not go to the Canal Commissioner Fitzhugh to get a draft; it was on the middle division. I went to Albany; I was very anxious to get a draft and get Oliver Teal to sign it, because he lay very dangerously sick.

Q. Why did you not go to Fitzhugh? A. I knew he would not give me a draft.

Q. What did you do? A. I went to Canal Commissioner Sherrill.

Q. What did he do? A. He gave me his draft on Auditor Benton; a regular canal draft.

Q. After you got your draft what did you next do? A. I sent it to the auditor's office, and it was protested.

Q. Payment refused? A. Yes, sir.

Q. Then what did you do? A. I had a conversation with the auditor; I asked him why that draft would not be paid; he said it kicked up a devil of a breeze when it came in there, and he went to the Treasurer and had a conversation, and it went by the board.

Q. Then what? A. I put it in my pocket and went away, and it ran until along toward fall, and I thought I would get an act passed to pay it—make an appropriation; I went and saw the auditor, and I told him we would have to do a little figuring to get this money, and I said this will cost considerable to get this thing through the Legislature, because they see some money in it and it smells a little of wool, and we have got to work it through kind o' quiet; I told him if he would include it in the general appropriation bill for the payment of the officers and canal commissioners that went up every year, that I would give him \$500; he did not say whether he would or not, but it was done as I requested.

Q. He did put it in when that bill was made up? A. Yes.

Q. What next occurred? A. I lay still, said nothing to nobody, either to the lobby or anybody else; the bill hung fire some time; they did not call it up till along toward the end of the session; finally it was called up and we had considerable of a breeze on it in the Senate; I got Senator Noxon to look after it, and finally we had a special session on it in the evening and a vote was taken on it; it was a very close vote, but it was struck out; it was within one or two votes of carrying it but it was struck out of the bill; then I had a pretty lively time, I concluded I would have to use a little soap; after the adjournment of the Senate that evening I fixed things, and drew up my bill that evening before I went to bed, had it introduced next morning, got Senator Noxon to ask unanimous consent to introduce the bill, it was granted, and then we asked unanimous consent and put it on the third reading and the bill was passed that day.

Q. After the bill went through, what was the next thing in order. A. To get the money? I spoke to the auditor; he said I had better let it hang along until July, and I went down to Albany along about that time and took a trip with Charley

Sherrill and the auditor; went up round to Ticonderoga and Lake George, and along there; took a pleasure trip. I had some other things in view, and when I got back there he gave me the money; I took the checks on two or three different banks there; then I went back up to the auditor's office; Canal Commissioner Sherrill and Auditor Benton were there; and I took out a five hundred dollar bill and folded it up in my hand and handed it to Canal Commissioner Sherrill, and asked him if he would not hand that to the auditor; he took it in his hand; it was folded something like a ballot; I don't think Commissioner Sherrill knew what it was or what it was for; and he handed it to the auditor and he put it in his vest pocket.

Q. The auditor put it in his vest pocket? A. Yes, sir.

Q. When was this? A. The same day I got my money.

Mr. Benton was examined on this subject, and testified that he knew that Bangs laid claim to Teal's claim as assignee; that Sherrill gave him a draft on Benton as auditor; it was presented and protested, and Benton told Teal that Fitzhugh had protested against it, and Benton would not pay it unless he got an act of the Legislature to authorize its payment; that an act was passed to pay the claim, and the claim was paid; about the five hundred dollar matter he was examined as follows:

You recollect of paying that bill, don't you? A. I presume it was paid.

Q. Did Bangs put a \$500 bill, when that Teal claim was passed, into another person's hands, folded up, and he handed the bill to you? A. Not to my knowledge.

Q. You would be apt to know it, if you got a \$500 bill? A. I should think I should; I don't want to be cross-examined on my own testimony, and on my own trial. That has been the whole course of the examination on this trial.

Q. I want to give you a chance to say what you want to say in regard to Bangs' evidence. A. I don't care what Bangs has sworn against me.

Q. I regard it, and the committee regard that it was proper, that as certain portions of Bangs' evidence implicated you, to call you and your attention to that portion that implicated you, and to give you a chance to explain or deny it. It was done for your benefit. A. I got the \$500 you speak of just as much as you did.

Q. That you deny? A. I never had \$500 from Bangs' or any one else.

Q. Did he hand it to another person, and did that person hand it to you in Bangs' presence? A. No, sir.

Q. Folded up like a ballot? A. No, sir, nothing of the kind.

Q. Who is the person named? Charles H. Sherrill? A. No, sir; Charles H. Sherrill gave me no \$500 no more than he gave it to you, or to either of you gentlemen around the board, and he won't say it.

Here was a flat contraction between the parties and some test to ascertain the truth must be applied. Now, I must state in justice to Mr. Benton that he denies this upon his oath, and this is a case of one witness swearing in the affirmative and one in the negative which would seem to

neutralize the testimony of Bangs were it not for the fact that in another matter testified to by Bangs, it appears that his brother lent Canal Commissioner Whalen, when in office, some money; after Whalen died his estate was sued for the loan. The defense put in was that the money came from work, I presume done for the State, in which Whalen was a partner, and therefore the transaction was illegal. The case was brought to trial at the Onondaga circuit and resulted in a verdict that it was an illegal transaction. Bangs testified that while the case was pending he received a letter from Benton, in his handwriting, as follows:

ALBANY, January 25th, 1861.

Mr. Eli T. Bangs:

Dear sir—I wish to have the suit with the Whalen estate settled.

Yours,

N. S. BENTON.

This letter was brought to Bangs by Canal Commissioner Sherrill. Benton was at the trial, and in a conversation with Bangs, said that the suit must be stopped.

Q. Why? A. He said he thought we might get heated up, in passion somehow and endanger him in trying the suit—some things might be developed that ought not come to light.

Q. What did you tell him? A. I told him I had no disposition to do anything that would injure him and I thought that the Whalens would not, and that of course he would have confidence in Mr. Severance, as he was his intimate friend, and I assured him there should be nothing on my part to injure him.

Q. That nothing should come out on the trial on your part? A. Yes.

Q. And that he could trust safely to Severance and the Whalens on the other side? A. Yes, but through his anxiety he remained here through the trial.

Mr. Benton was examined in relation to this matter and testified:

Q. Do you recollect that Mr. Bangs' brother sued the estate of Whalen, after Whalen's death, to recover money that was alleged to have been due? A. I understood the lawsuit at Syracuse was about that, but I didn't know anything in particular about it.

Q. Did you understand the estate of Whalen, the late canal commissioner, set up as a defense to that claim of lent money, that Whalen was a partner with Bangs in the work, therefore the lending of the money was illegal? A. I understood that was the allegation; I don't know anything about it.

Q. Did you attend that trial? A. No, sir; I didn't attend that trial; that is, I was at court at that time, but I was there as defendant.

Q. What case were you on? A. I was there as defendant.

Q. In what case? A. On the mandamus case.

Q. Was your case tried? A. No, sir.

Q. Did you have any interest whatever in that case of Bangs against Whalen's estate? A.

Why should I have any interest in it? Q. Did you have any interest in it? A. I had no more interest in it than you had.

Q. Did you feel any interest in it? A. No, sir, not a particle; I had nothing to do with it.

Q. Did you ever write Eli T. Bangs a letter, telling him that you wanted that case settled? A. Not that I know of.

Q. Have you any recollection of writing any such letter? A. No, sir.

Q. Do you believe you ever did. A. If I did, it is on record in the office.

Q. Do you believe you ever did? A. I don't think I ever did.

Q. You know your own handwriting, of course? A. Certainly I do, sir.

[Handing letter to witness.]

Q. Will you look at that letter, and tell me whether you wrote that letter to Eli T. Bangs? A. That is my handwriting, sir.

Q. Won't you read it? A. "I wish to have the suit with the Whalen estate settled." That is my handwriting, and I wrote it.

Q. How is it signed? A. It is signed "Nathaniel S. Benton."

Q. Is that your handwriting on the envelope that it went in? A. Yes, sir.

Q. How came you to write that letter to Bangs if you felt no interest in that case? A. I presume I wrote it because the children came and asked me to.

Q. Do you know anything about it? A. Not a bit.

Q. You don't recollect how you came to write that letter? A. No, sir, no more than you, not a bit.

Q. Do you know how you sent that letter? A. No, sir.

Q. Do you know now, on having your memory refreshed, of sending Charles Sherrill, the late canal commissioner, to Fayetteville, on purpose to deliver that letter to Bangs? A. I don't think I did.

Q. Will you swear you did not? A. No, sir; but I don't think I did.

Q. The best you can say is, you don't think you did? A. I don't think I ever did such a thing.

Q. When that trial came on, did you meet Eli T. Bangs, when you were at Syracuse, while it was being tried? A. I don't remember of seeing him there, but still I might have seen him; it is possible I might have seen him.

Q. You were all through the Whalen trial. A. I guess not.

Q. While it was going on? A. No, sir, I guess not—I reckon not.

Q. Didn't you say you were present when that Whalen trial was tried? A. I was there at the circuit that suit was tried.

Q. Were you not there throughout the trial? A. I don't remember.

Q. Don't you know you were there while that trial was going on? Were you not present in court listening to it? A. I was in court.

Q. Don't you recollect being there part of the time when the case was being tried, and that Judge Pratt tried it on one side, with Mr. Andrews, and Mr. Noxon on the other? A. I was in the court-house there.

Q. While it was being tried? A. Part of the time while it was being tried.

Q. Did you meet Bangs at the Syracuse House, and have a conversation with him about that suit? A. I won't say that I had not.

Q. Did you tell him there that this trial of the suit must be stopped? A. I don't think I did.

Q. Did you tell him you thought they might get heated up with passion some how and endanger you? A. Not that I know of, sir; I don't think I did.

Q. That in trying the suit something might be dropped that ought not to come to light? A. I don't think I ever said such a word to him or to any one else.

Q. Did he tell you he had no disposition to do anything that would injure you? A. Not that I remember.

Q. And he thought the Whalens would not, and of course you would have confidence in Severance, as he was an intimate friend? A. I have no recollection of having any such conversation with any living being.

Q. Did he assure you that nothing would come out to injure you? A. Not that I know of; I don't know what I had to fear in that suit.

Now, here again was a direct contradiction between the testimony of Bangs and that of Benton, and the testimony of Bangs would have been again neutralized, but for the fatal letter in Benton's handwriting which completely upset his testimony and established that of Bangs, thus convicting Benton of falsely swearing to one statement. Now, we have in law a Latin maxim of this kind, "*Falsus in uno, falsus in omnibus*," and which I have once heard freely translated to this effect, that he who will swear falsely to one lie will swear falsely to an omnibus full of lies, and that has been the case here with Benton. Where he is contradicted in one instance by Bangs upon his own showing, we can easily say that there is much force in the statement that all the charges which are made against Mr. Benton are true. Not only that, but I take the liberty of referring you to the testimony of Benton himself, giving the supplementary report when he was examined, and gave testimony as follows:

Q. Was there any money paid to you for the ostensible purpose of building an academy at Little Falls by the contractors? A. Yes, sir.

Q. How much? A. I got in all, of that fund \$5,500.

Q. Who was it paid to you by? A. I can't name them now.

Q. Did Selye pay part? A. He paid \$500.

Q. Did Lord? A. \$500.

Q. Gale? A. \$500.

Q. Belden? A. \$500.

Q. Case? A. I guess not.

Q. Willard Johnson? A. \$500.

Q. Commissioner Dorn? A. \$500.

Q. Has that money ever been used for the benefit of the academy? A. No, sir, it has been invested; it is on interest now.

Q. How long since that has been paid in? A. Two or three years ago.

Q. How came these contractors to be interested in building an academy at Little Falls? A. I can't tell you anything about that.

Q. Why has not the academy been built? A. It ain't an academy; it is a hall.

Q. Why has it not been built? A. There is not money enough.

Q. How does it stand? A. It stands in my name, but it belongs to the trustees of the academy.

Q. What is it invested in? A. In State stocks and United States stocks.

Q. Where are they? A. Down in the bank.

Q. And the \$5,500 came out of the contractors? A. No, sir; not out of the contractors.

Q. The canal men? A. Yes, out of canal men.

Q. How came they interested to build the hall at Little Falls? What induced Mr. Belden, of Syracuse, to pay \$500 to build the hall at Little Falls? I don't know, excepting this: the condition of the subscription was that every subscriber who paid \$500 was to have a free scholarship in the academy.

Q. The trustees are to build a hall? A. Yes, sir, a hall appended to the academy.

Q. How much would build that hall? A. I supposed at first that I could get through with \$6,000, but that would not build it; and last winter, the last effort I made to get up the balance of the subscription, the bids for the hall were \$8,000. I could not raise it, and did not get along far enough until this committee was appointed and I concluded then I should not pay it back until this was over; I was going to pay it back but I did not want to open the door any wider.

Q. Do you think it would open it any wider? A. I did not want it to appear that I feared it.

Q. Don't you know that these men felt no interest in the academy whatever? A. They felt no interest, probably, further than I did.

Q. You reside there? A. I reside there.

Q. Did you ask any of those men to give it? A. I asked some of them. Mr. Seyle, Mr. Dorn and one of the others.

Q. They paid it over promptly? A. Not promptly.

Q. They paid it over to you? A. They paid it over and I got it, and when you are through, I am going to pay it back; I shall not before.

Q. Why don't you go on? A. Because I can't get money enough to build the building.

Q. When did you invest the money in stocks? A. It has been invested since I got it.

Q. Did any one contribute to the building, outside of the village of Little Falls, except canal men? A. No sir, the \$5,500 was contributed by canal men, in one way or other.

It thus appears that Mr. Benton seemed to treat the contractors and those having business to do with canals as the only persons fit to make presents and to make donations for the establishment of so laudable an institution as the academy at Little Falls. He goes on to state that he has determined to return the money to the donors. A meeting of the benevolent donors to receive back the money would be well worth seeing. A photograph of the whole group collected for that purpose would be well worth taking and preserving. The feeling of grief which they will manifest, and the disappointment of their charitable intentions, at being compelled to take back those \$500 greenbacks will be worth a painter's study. It would be a great loss to the cause of

literature not to have this academy raised provided that money was contributed in good faith for such a purpose. I can hardly imagine that these contractors, if they gave this money from the outpourings of their generous dispositions for the promotion of the cause of literature will desire to have it returned back to them again. But it is much to be feared that this institution of Benton's is an afterthought; it may never be reared; it may never be known and although Little Falls may go on and rise to be a great city, that academy is yet existing in the womb of time. The cause of learning is too pure to be advanced by such means, and an academy reared on such a foundation will hardly flourish. It will be like the institution we read of in history, reared by the keeper of a brothel from the wages of iniquity, for the benefit of widows and orphans, on a foundation of the donor's name. Not being founded on true virtue and charity, the widows and orphans it was intended to shelter, shunned its walls with loathing, and preferred an asylum in the open fields and woods, and in time the edifice crumbled, unused, to ruins. I shall refer to but one more case of fraud, and of the fate of an officer who dared to do his duty.

Lorain T. Nichols testified that he was formerly an engineer on the canals of this State. He was engaged on the Chenango extension in the fall of 1864. Mr. Bruce was commissioner in charge. Nichols says:

I located a portion of that extension; from Binghamton clear through, I located the whole line, but don't know as it was submitted to the canal board further than section 20; the canal board and State Engineers approved of the location as far as section 20; the line remained so located when the work was put under contract; section 26 is not embraced in this location; I have not been on the line since the 15th of April last; there had been no change of location at that time; I don't know anything about what has been done since April 15th; I have no connection now with the canal; I don't know as I know of any irregularities; I have examined the estimates Byron M. Hanks made since I left, and they are largely increased from mine; he is now resident engineer; my estimates were made before the work was done, in actual measurements clear through; the aggregate estimates from contractor's prices on which the work was let, of what the work would cost, is as follows:

Sections.	Nichols.	Hanks.
1,.....	\$8,578 00	\$11,145 00
2,.....	28,049 00	47,980 00
3,.....	29,952 00	33,212 00
4,.....	48,212 00	52,697 00
5,.....	30,309 00	60,555 00
6,.....	28,315 00	49,702 00
7,.....	25,506 00	28,880 00
8,.....	13,437 00	30,000 00
9,.....	8,450 00	17,000 00
10,.....	9,780 00	14,154 00
11,.....	17,765 00	24,180 00
12,.....	11,275 00	18,480 00
13,.....	7,165 00	9,010 00
14,.....	8,285 00	17,500 00
15,.....	7,465 00	15,050 00
16,.....	11,875 00	18,150 00
17,.....	12,700 00	27,400 00
18,.....	38,805 00	59,600 00
19,.....	6,876 00	13,050 00
20,.....	14,480 00	22,000 00

Locks.

1,.....	\$9,192 50	\$11,206 00
2,.....	8,625 00	10,730 00
3,.....	9,544 50	11,969 00
4,.....	13,453 00	14,676 00
5,.....	11,217 50	13,696 00

Bridges.

On sections 1 to 5 inclusive,...	6,319 75	20,433 00
do 6 to 10 do ..	8,488 00	16,225 00

Culverts.

On sections 1 to 5 inclusive,...	9,878 00	9,637 00
do 6 to 10 do ..	14,393 00	14,340 00
do 11 to 20 do ..	11,580 00	22,005 00

Aqueducts.

Choconut creek aqueduct,	13,944 50	17,370 00
Tracey creek aqueduct,.....	9,743 50	10,590 00
Aysolochin aqueduct,	13,944 50	16,587 00

Q. Are those the prices at which the work was let? A. Yes, those are the prices of the letting.

Q. Did you estimate the expense on section 26? A. I did.

Q. How much did you estimate it? A. Ninety-nine thousand dollars.

Q. Mr. Hanks, in his report, has proposed to change the location on that section, has he? A. Yes, sir. [The witness here read the following paragraph found in report of Byron M. Hanks, on page 76 of the annual report of the State Engineer and Surveyor, for 1866: "My estimate of the cost of constructing this section is based on the supposition that the line should be thrown more into the bluff, which increases the excavation and diminishes the embankment. This change I consider necessary, firstly, for the safety of the work;"] that is, on section 26.

Q. What would be the effect of the change proposed by Mr. Hanks on that section? A. It would add to the rock excavation and diminish the embankment.

Q. Do you know what the contract price for those two items was? A. No; I have not the contract prices.

Q. How much, in your judgment, would that change of the line, as proposed by him, increase the cost of this work? A. He says it should be thrown more into the bluff, but how much more I cannot say.

[The following paragraph from Byron M. Hanks' report, found on page 76 of annual report of the State Engineer and Surveyor for 1866, was read: "Section 26 exceeds the engineer's estimates somewhat largely, as do several other sections and groups. Originally the principal item of work was embankment, occasioned by locating the canal far out in the river, at a point, too, known as the Narrows, where in times of freshets there is a great depth of water and a violent current."]

Q. What kind of work did you estimate for a protection against the current of the river at that point? A. Heavy slope wall.

Q. Which would afford the best protection—stone thrown up or back from the rock excavation promiscuously into a wall or bank, or stone laid in the form of a slope wall? A. I suppose they would be the best protection laid in the form of a slope wall.

Q. Have you any doubt about that? A. No, sir.

Q. Did you believe that the location made by you was the best? A. I did.

Q. Do you believe that the change of location proposed by Mr. Hanks would be for any purpose except to increase the expense? A. I cannot conceive that it would be any safer as he proposes.

Q. Can you see any assignable motive for putting it as he proposes except to increase the expense? A. The motive that he assigns is to make it safer; that it will be safer to make a cut.

Q. True; but can you with your knowledge and judgment of such matters see any motive except to increase the expense? A. No, I do not see that it can make it any safer; for you cannot get into that hill so as to get it out of the river without two hundred feet cutting.

Q. By changing the line as Mr. Hanks proposed, so as to throw it into the hill, would it not make a rock cutting and furnish the contractor with stone to make a rip-rap wall, and would he not get the stone at less expense in this way than he would on the line if not changed? A. Yes, sir.

Q. The State then has to pay the expense of quarrying this stone, and yet the contractor gets paid for it as he lays it in the wall? A. Yes, sir.

Q. And so the contractor makes the State pay the expense of doing his work? [No answer.]

Q. Do you think that is an economical method of doing work for the State? A. I do not; no, sir; throwing the line into the bluff and cutting the bluff down where it is covered with debris, causes that which is above to slide down, and occasions great expense to remove it.

Q. Does the contractor have a price for loose stone? A. I do not know.

Q. The change proposed in the location of the line at that point, would make the contract more valuable to the contractor? A. Oh, yes, sir.

Q. In order that we may know your ability to judge of these matters, I will ask you in regard to your experience as an engineer; you consider yourself a capable engineer do you? A. I do.

Q. How long have you been engaged in that business? A. It has been my principal business for thirty years.

Q. Have you been removed by the canal authorities of the State from employment on the canals? A. Yes, sir.

Q. By whom? A. I received a notice from Mr. Gere last March.

Q. By whose direction? A. He did not say by whose direction; he was division engineer.

Q. Under whom was he division engineer? A. The State Engineer.

Q. Who was the canal commissioner in charge of that division? A. Mr. Bruce.

Q. On what ground were you removed? A. There was no ground stated to me.

Q. Have you any information of the ground? A. No, sir, I was simply served with a notice that my services would not be required after the 15th of April.

Q. Had you previously made any estimate or furnished any statement in regard to any work that had any connection with your removal? A. Yes, I suppose I had.

Q. State what you had furnished? I had a sub-assistant under me, who was sent there by Mr. Goodsell, Engineer.

Q. What was his name? A. George Cushing.
Q. He was sent there under you as sub-assistant? A. Yes, sir.

Q. State the entire matter in its connection? A. He made out estimates along in the summer on the work.

Q. What was this on? A. On sections 5, 6, 7, 8, 9 and 10, of the Chenango extension; after a while I discovered that he was making over-estimates, and had sent them to me to be certified to.

Q. What do you mean by overestimates? A. He estimated more excavation than there was done.

Q. A lying estimate—for the contractor? A. Yes, for the contractor.

Q. You ascertained that he had done that and forwarded the estimate to you for your certificate? A. Yes, sir.

Q. Did he have to fortify that by his oath? A. No; after I had certified to the estimates as correct, I looked them over and found them incorrect and that I had made a wrong certificate upon his representations, and I reported it to headquarters and asked for instructions, what I must do about it?

Q. Reported to the State Engineer? A. Yes, and to the commissioner in charge, Mr. Bruce; they did not give me any instruction for some time.

Q. Did you report in writing? A. Yes, sir; I reported to Mr. Goodsell in the first place and received no reply from him, and it came to be most time for another estimate.

Q. Thirty days that is? A. Yes, sir; and I wrote to Commissioner Bruce asking him what I must do in such a case; that another estimate was coming and that there must be something done before another estimate was made; I asked whether I should make an affidavit saying that the work for the last month was so much, and not cover the full amount, so as to make it right, or whether I must state the whole amount of work done; when I wrote to Mr. Bruce in relation to that, I received a letter from Mr. Goodsell saying that the affidavit must not be changed, but that as to the certificate of the amount of work done upon that, I must act according to my own judgment; my judgment was that I must conform strictly to the affidavit and I made out the next estimate in that way.

Q. Did you receive any directions from Mr. Bruce? A. No.

Q. You made out the next estimate exactly according to the fact? A. Yes, sir; on some of the contracts there was nothing coming after a month's work.

Q. This last estimate virtually corrected the error of the previous one? A. Yes; the work that was going on; there was some of the work that was stopped, so that they did not do any more; on one section there were fourteen thousand yards of embankment more estimated than there was done, and they stopped work; they did no more on that work while I was there.

Q. The contractors stopped work? A. Yes, sir.

Q. About how much would the fourteen thousand yards amount to. A. Fifteen cents a yard.

Q. When was that estimate? A. That was the October estimate.

Q. When was the estimate made by your assistant? A. It was the October estimate that he made, and then in the November estimate I made the correction.

Q. What occurred next? A. In February he made another erroneous estimate, and reported to Messrs. Goodsell and Bruce that I thought he ought to be out of the way.

Q. He made another estimate of the same character? A. Yes, sir.

Q. Incorrect in fact? A. Yes, sir; I reported to Mr. Goodsell that I could not take care of that work with Mr. Cushing there in my way, that I could take care of it a good deal better if he had been away; an estimate that he made in February he sent to me by a contractor for my signature, I looked it over and told the contractor that I could not certify to that.

Q. What is the name of the contractor? A. Charles A. Danolds.

Q. Did you tell him why you could not make affidavit to that estimate? A. Yes, I told him it was not correct; he said, "I will take it to Syracuse without an affidavit then."

Q. To the resident engineer or commissioner? A. Yes, he said he would take it to Syracuse; these estimates were made out at Binghamton; and he went to Syracuse without an affidavit, and it was sent back to me with instructions that if it was not correct I must correct it and make affidavit to it; I did so; there was twenty-five hundred yards of slope wall in that estimate when there had not been any at all laid.

Q. The effect of including that amount in that estimate would have been that the contractor would have drawn pay for that wall without having laid it at all? (No answer.)

Q. What was the price of that wall? A. A dollar and a quarter or a dollar and thirty-seven cents a yard is the price of such wall.

Q. Anything else wrong? A. Yes, the rock excavation was largely in excess of the amount.

Q. Do you remember the amount? A. I do not remember the amount of rock excavation—somewhere in the neighborhood of a thousand yards.

Q. Did you return the same paper corrected or a new paper? A. A new one.

Q. Did you retain the estimate? A. I put it into my drawer, but it was taken out afterward; the paper is gone.

Q. Give us what occurred next? A. Pretty soon after that the letting at Owego came off.

Q. You attended? A. Yes, sir; at that letting Mr. Bruce called me into a room and wanted to know what the difficulty was with Cushing and I told him what it was.

Q. Were you and he alone? A. No, there was a number there with us.

Q. Who was there? A. Mr. Gere.

Q. Who is Mr. Gere? A. The division engineer at Syracuse.

Q. What is his first name? A. His full name is W. H. H. Gere.

Q. Who else was present? A. Mr. Evans, assistant engineer at Binghamton; his full name is John Evans.

Q. Who else was present? A. L. F. Olney, assistant engineer at Binghamton.

Q. Was any one else present? A. I do not remember who else.

Q. State what occurred after Mr. Bruce asked you what the trouble was with Mr. Cushing? A. I told him that he did not attend to business, that he made overestimates and that he was in the habit of drinking.

Q. Was that the fact? A. Yes, sir.

Q. Did he drink to any extent, to the extent of intoxication? A. Yes, sir.

Q. What further did you tell him? A. That is about all that I told him; Mr. Bruce said to me, "Mr. Cushing says that you are arbitrary and oppressive and I think there is something in it;" and that was about all that there was said about it; on my way up Gere came and said to me, "I have given Cushing notice that his services are not wanted after such a time and gave him notice to give his books up to you;" Cushing went away at the time but he never gave any books to me; then things remained in that way until the middle of March, and then I received a line from Mr. Gere saying that my services would not be wanted after the 15th of April.

Q. Is Mr. Cushing in the employ of the State now? A. I believe he is.

Q. At what point? A. In the State Engineer's office.

Q. In what capacity? A. I do not know; he was sent back again there after I left.

Q. How soon was he sent back? A. I do not know how soon; I think within two or three weeks.

Q. Was he placed in charge of that work? A. Yes, sir.

Q. Making the estimates? A. Yes, sir.

Q. How long ago was that? A. That was in last June or July.

Q. In '66? A. Yes, sir.

Q. Has he continued there since? A. No.

Q. How long did he remain? A. He continued there until Hanks went there, and Hanks found that he was not a man to be trusted and he removed him; he came back here and I understand that he is in the State Engineer's office now.

Q. Mr. Hanks holds the position that you did, does he? A. He acts in the same position but it is considered a different grade from the place that I held; there was a law making provision for the appointment of a resident engineer; when I was there, there was no authority providing for a resident engineer there.

Q. Is there anything else that you remember that would be of interest to this investigation? A. I would state something that I have observed in relation to these lettings; I had made up my mind that this work could not be done at the prices the contractors were bidding for it without ruining them; still they have continued to bid in that way.

Q. They are making money, are they not? A. Yes; I suppose they are.

Q. Although they take the contracts at ruinous rates? A. Yes; the way they make money is by changes of classification or material; I will show you what I consider fair prices for the

work, and the prices it was declared off at; the items are the same in mine as in the other:

Sections.	Nichols' Estimate.	Price as Let.
1,.....	\$13,095	\$8,578
2,.....	57,915	28,049
3,.....	34,595	29,952
4,.....	92,670	48,212
5,.....	56,670	30,309
6,.....	50,695	28,315
7,.....	43,095	25,506
8,.....	21,185	13,437
9,.....	12,745	8,450
10,.....	15,430	9,790
11,.....	30,650	17,765
12,.....	17,050	11,275
13,.....	12,130	7,105
14,.....	14,150	8,285
15,.....	12,650	7,465
16,.....	22,650	11,875
17,.....	21,000	12,700
18,.....	57,800	36,505
19,.....	10,650	6,876
20,.....	23,700	14,490

Q. Why do you suppose they took it at such low rates? A. My idea is that they took it at such low rates with the intention of changing quantities or lines or something; making a different classification.

Q. Could that be done without the collusion or aid of the engineers? A. No, sir.

Q. That could not be accomplished without the aid of the engineers? A. I think not; I do not think it could have been done if I had remained there.

Q. Could it have been done by the contractors having a large amount included of a kind of work that was at a low price and then having that changed so as to have a large amount of another kind of work which was at a high price, as was done in some cases, changing embankment, for instance, for rock excavation, as was proposed, particularly on the twenty-sixth section? A. Yes; I have heard that the contractor's price for rock was a pretty high price, and the price for embankment was low; have understood that for embankment the price was less than twenty cents a yard.

Q. So that if they should get rock and do away with embankment, that would make a great difference in the expense? A. Yes, sir.

Q. The change proposed on that twenty-sixth section would make it mostly rock and wall? A. Yes, sir.

Q. For which the contractor has a large price? A. Yes, sir; Mr. Hanks explains that one item of the increase in expense is the change from slope wall to rip-rap wall; he says [page 75, State Engineer and Surveyor's Report, for 1866], "while there was abundance of material for loose stone protection and rip-rap, and while the price of the latter has generally been about the same as that of the slope and protection wall, and sometimes considerably less, yet the quantity generally exceeds considerably the amount that was estimated of slope and protection wall for the same locality."

Q. They could get rip-rap stone out of the rock cut? A. Yes, sir; and it requires a greater thickness of rip-rap wall than slope wall, and so they could get a good deal of difference there in estimating; there is a question whether he has a right to make such a change.

Q. That would be virtually merely requiring

the contractor as he excavated the rock to dump the stone outside, and that would form this rip-rap wall? A. Yes, sir.

Q. He would have to dump the stone there any way, would he? A. Yes.

Q. Ordinarily he would receive no pay for that, —merely dumping the stone as it was excavated—no additional pay? A. No, sir; in my location of the line there would have been no stone there of any consequence.

Q. In the form in which the contracts are drawn up is there any clause requiring that stone taken out of excavations shall be allowed the State, if they are used in the work? A. I believe not; I believe the contract allows the contractor to use all the material he finds on his work, and to have pay for it.

Q. So that the effect of throwing this line into the bluff or hill would be to give the contractor rock excavation, for which he was paid at a high price, while at the same time, the excavation supplied him with stone for which he was paid, and which he used to make the rip-rap wall? A. Yes, sir.

Q. Is there anything further that occurs to you of interest to this investigation? A. Here is a remark Mr. Hanks makes about section 23. [Page 77, State Engineer's Report of 1866.] "Section No. 23 is increased heavily by a change in the location of the highway, nearly the whole length of the section, by which means three or four bridges are dispensed with;" I do not see how dispensing with 'the bridges' should increase the expenses heavily.

Q. Anything further? A. I do not think of anything more.

Now it may be said, in regard to all of my argument on this question, that this has nothing to do with the proposition before us for the enlargement of the canal and for the appropriation of money for such purpose. To me it appears that it has much to do. Until we get a good honest system of accountability and integrity on the part of our public officers, it is not safe to intrust them with the disbursement of any more money, and particularly so large an amount as is called for even by the Canal Committee, and as has been shown and I think the testimony here will show, that eight millions of dollars, the estimated cost, will swell up to twice or three times that sum. Claims will be made for damages by water and flood, and claims will be made for additional earth embankment to replace what contractors have improperly made, and canal officers will be found willing to allow such claims as right and just. Now we who are opposed to this expenditure at this time can say that, although the advocates of this enlargement promise they will have a better system, it had better be left until that better system shall be established. It is very easy for the people, at very short notice upon a submission to them by the Legislature, to authorize an expenditure of money for the enlargement of the canals or any increase of the public debt, if they think it will be safe to do so, but until we are satisfied that a system can be devised that will produce more integrity on the part of our public officers having the disbursement of so large an amount of money

we had better say, as any man in business would say, before he begins to make an appropriation of his money to be disbursed by others than himself, "I want to see honest agents and honest servants before I am willing to embark in any great or any doubtful enterprise." These canal contractors at this time seem to have control of the officers having charge of the canal. They are the persons that prowl around our nominating conventions. They are the persons that make the candidates for such offices. Where they themselves will have some personal influence with them. And it may be said that if you take away from the people the choice of such officers—take away from the nominating conventions the power of naming individuals at the instigation of the canal contractors, and give that power to the Governor, and let him appoint such officers by and with the consent of the Senate, for a long term of years, you will reach that golden era when honesty shall abound all over the State. I should like to see that tried before we put much money in it. The same individuals that hang around our nominating conventions and take care that proper officers are selected for the canal board to suit their purposes, will take good care, when the power of appointing canal officers is taken from the people and given to the Governor, to make their influence felt in the choice of your Governor. And while I have nothing to say in regard to the Governors that we have had heretofore, and know nothing as against their honor or integrity, yet the candidates for Governor will be men, in spite of all the safeguards you may throw around the office in the Constitution—they will be subject to influences of those who will make Governors. As I said before, I know nothing against the honor or honesty of any of our late Governors nor the present one, but I know this, that they are filled with the same emotions that exist in other men's breasts—they are alive to the emotion of gratitude, at least in one case—I speak of a late Governor who is now one of our Senators. I refer to him who owes his election to the office of Senator by the betrayal of one of the representatives of Kings county in the Assembly, of the interests of his constituents. That member deserted those who trusted and elected him, and gave a vote which secured the election of this ex-Governor to the office of United States Senator. And, although that man has never dared to offer himself again to the suffrages of his fellow-citizens in Kings county, he has not been dead to public life. The Senator that he made, procured his appointment to go into the Southern States to look after the cotton existing there. He was cotton agent of the treasury department for a long time, until that office was abolished. He returned to the city of Brooklyn, and was compelled to take up his abode in one of our most magnificent brown-stone buildings, probably from the savings of the humble office that he filled as cotton agent. But the gratitude of our ex-Governor did not stop there. He was able to prevail upon the Senate to reject every candidate proposed by the President for collector of internal revenue for our district until it reached that traitor to his party, and then the nomination was approved; and he now

resides in our midst, holding the most important office of collector of internal revenue in one of our congressional districts—proving, in this instance at any rate, that although republics may be ungrateful, republican Governors and Senators certainly are not. My colleague from Kings county [Mr. Bergen] informs me that that collector of internal revenue has just been arrested for fraud in his office and has been held to bail in fifty thousand dollars.

Mr. AXTELL—Inasmuch as the gentleman has referred to republican Governors and Senators in his argument, I would like to ask him this question: if he knows the political complexion of that class of persons to whom he refers, called the "canal ring"—if he does not know that a majority of them were democrats?

Mr. BARNARD—Well, that may be so, for aught I know. I have not treated this subject of canals as a political matter at all. I may have referred to canal commissioners that I knew were democrats, that have been subject to the same vile influences as the commissioners that were elected on the other side. I should be very sorry to have this question passed upon merely as a political question. I say the evil may be in the bad system. I care not who it is that picks my pocket—I should be just as much opposed to it if the pickpocket were a democrat as if he were a republican. And if we were to look upon all the evidence given in this case, we might imagine that this canal department was one great hen-roost, composed of the white democratic hen, hungry and starving, the conservative republican yellow hen, getting a few crumbs from the table, and, finally, the great, fat, republican black hens, that have fed for a long time upon the riches of the public crib. And they all seem willing to submit to the clucking and treading of any crowing cock that will take care to protect them while feeding upon the public granary. I make no exceptions, except that they who have had the power have failed to reform the public evil. I hope the gentleman from Clinton [Mr. Axtell] is satisfied. If it is not the party, it is the system, and one or the other must be reformed. Now, hurrying on to a conclusion of my remarks, I wish to state that I do not desire to be considered as being opposed to the canal system. I have already said, "Give us an honest management, guaranteeing it first by proper legislation, so that we can see where we stand, and then, after the payment of our public debt from the revenues applicable to that purpose; and if there is any other portion of the debt referred to in these reports which properly should be repaid into the public treasury from the canal revenues inasmuch as it has been advanced for their benefit, I would have that money taken and applied in payment of the bounty debt of \$26,000,000. I wish to see the public debt discharged. I wish to see in regard to our public matters what we can only see when we are free from debt. I feel that this State has not been true to its plighted faith in times that are past. I know that when we have wanted to borrow we have made fair offers, and we have induced persons not only in this State but in foreign countries to advance their money to our State as loans, under the guaranty that they

would receive interest punctually. And I know at this time that for every one hundred and forty-two dollars' interest that we pay to our foreign creditors they do not in fact receive more than one hundred dollars in real cash. Where we pledged ourselves to pay a dollar, we force upon them greenbacks which do not produce and are not worth that dollar. And I feel a blush of shame whenever I come across any traveler from Europe who is interested in our public debt, and who holds our bonds, received in former times, because we are compelling that man to submit to a reduction of some twenty, thirty or forty per cent of the dues he is justly entitled to receive. I turn from our State, which ought to be "excelsior" in this respect, to that State in the far West, the State of California, that amidst all the trials and struggles of the past four years has remained true to her early teachings. In the State of California a dollar means a dollar in gold, and nothing else; and when you offer a greenback to any citizen there he does not receive it as a dollar—he receives it as seventy or seventy-three cents, according to what it will bring in gold in the market. And California for the last three or four years has remained true in spite of the efforts of our treasury department to get her people to make a change; in spite of threats that have been made that acts of Congress would be passed compelling her people, under penalties, to recognize this greenback currency. And now that a brighter day begins to dawn there, and now that she has returned again to her early faith, we may be sure that she will continue to be true to her plighted honor. And we may be sure that if the State of California and the State of New York, should ever have occasion to compete together in the foreign market to obtain a loan, the State of New York, with all its wealth and prosperity, and all its population, will be thrust aside and the right hand of confidence held out to California as a State that has been true even in adversity. Now, Mr. Chairman, as I have said before, when our public debt shall be discharged, I cannot go so far as is proposed, that we should give up the tolls entirely on our canals, or that they should be reduced merely to the cost of the maintenance and repair of the canals. I consider them as our great internal improvement system. I regard all our canals, whether they pay a profit or not, as internal improvements that ought to be under the fostering care of our State. And more than that, in those sections of the State where canals cannot be used, I should like to see a portion of the revenue of these canals given to them so that they may improve their roads and railroads in order that people in every part of the State can, in a very short time, not exceeding thirty-six hours in any case be transported from one extreme part of the State to the other. That is what I would like to see—an internal improvement system that would give a revenue, not for the purpose of meeting our public expenses, but a revenue to be appropriated to roads and other internal improvements of that kind, throughout the State, in order to promote the prosperity and intercourse of our whole people.

Mr. BERGEN—Mr. Chairman, whether a State should own any more property than is absolutely necessary for governmental purposes, leaving to individual or associated individual efforts under proper restrictions, the developing of its resources, and the providing of means of conveying its productions from place to place, or to market, is a question on which individuals differ, but which I do not propose at present to discuss. The people of this State have seen fit to construct a system of canals; they own them; the question now to be determined is, what shall be done with them? Are they, or any portion of them, insufficient, or likely soon to become insufficient, to perform the work? If insufficient will it pay to improve them? Are any portions of them unproductive investments? The subject of the canals, whether managed by individuals or the State, is one of great importance and on their success much of our prosperity depends. I well recollect, when in progress of construction, the Erie canal was called in derision, Clinton's big ditch, and many of the farmers of Long Island and in the vicinity of New York were led to believe, that it would bring into competition with their cereals, the cereals of the western part of the State, reduce their value, prove ruinous to their interests, besides creating a debt which would be an incubus on their shoulders, to continue from generation to generation, never to be repaid from the profits of the concern. Even many of the leading merchants of the city of New York, as has been stated by the gentleman from Richmond [Mr. Brooks], opposed its construction on the ground that it would prove injurious to the trade of the city. In spite of all opposition, of prophecies of failure, the genius of Clinton, its founder, prevailed, and the canal, in 1825, was completed, uniting in one embrace the waters of the Atlantic with those of the great lakes. I well recollect the day of rejoicing when this event took place, happening to be in Buffalo at the time the celebration commenced. Instead of a failure, the Erie canal has proved to be an undisputed success, and has more than fulfilled the anticipations of its projectors, which none, I presume, will now dispute. It has not only developed the resources of the central and western portions of this State, and caused the wilderness to blossom as the rose; but instead of destroying the trade of the city of New York and proving injurious to the interests of the agriculturists in its immediate vicinity, it has probably done more to build up that city and make it the commercial metropolis of this continent, and to further the interests of the agriculturists in its vicinity, than all other causes combined. It has greatly aided in revolutionizing, and will continue to revolutionize agriculture in this State. It has been the main cause of concentrating together the present vast population of the commercial metropolis and its vicinity, of studding the beautiful banks of the bay of New York and the Hudson, with beautiful villas, a population which outside of the cereals requires an immense amount of other food to supply their wants; food for the production of which, in the days of my youth, when the Erie canal was in embryo, and the city had a population of but 96,000, a radius of about ten miles around was able to supply, but which

now requires a territory extending over a large portion of the State. In those days, outside of this small circle, the cereals were almost the only productions the farmer had to dispose of, and his lands, from continued cultivation, and the difficulty of procuring manure to renovate them, were becoming exhausted, and afforded him a very precarious support. I can even point out large tracts in the county in which I reside, located within ten miles of the city of New York, whose cultivation from these causes was abandoned, and they were suffered to spring up with thorns and bushes, and finally revert back to forests. What farmer in those days, from the river counties of this State, dreamed of sending hay, potatoes, milk, fruit of all kinds, and other vegetables to the city of New York, and depending upon their productions for his support? Who then, in the middle or the extreme western and southern counties of this State dreamed of supplying said city with apples and other fruit, and the numerous cities and villages that have like magic sprung up on the line of the canal with the vast amount of vegetables their population consumes, and depending upon their sale for his maintenance? These things have come to pass; these changes in the agriculture of the State have been made, changes from which the farmers have reaped great benefits, by means of which their condition has been greatly improved, their comforts increased, and untold wealth been poured in their laps. Now, sir, this canal at its inception, as I understand it, was sustained by the people of this State mainly on the ground that it would develop the resources of the State, and be the highway to the sea-board for its productions. It has not only accomplished this, but much more; it has become as is well known, the principal highway for the productions of the mighty West, a giant yet in its infancy, whose wailings, like those of a new-born babe, are beginning to be heard, but whose voice by and bye will be sounded in our ears like thunder, and in whose hands we will be held as children. They intend to have cheaper transit for their cereals to the markets of the world; they desire us so to manage our canals as to give it, and to continue this transit through the natural valley in our midst—a transit which will redound to the interest of the whole State, especially to that of the metropolis. We have it in our power to secure the main portion of this transit, this trade, and not only to continue but to multiply the benefits it has conferred. If we neglect this opportunity and refuse—if we adopt a short-sighted policy which will tie up our main artery or prevent its enlargement for probably the next twenty years—our present advantages may vanish, and when too late, we will repent of our folly. The day may come, and our refusal to afford increased facilities will force it, when the mighty West, whose hands will ere long wield the destinies of this country, will, under the plea of military necessity, not only build the often-referred to Niagara ship-canal, but also a ship-canal from the Chesapeake to the lakes by the way of the Susquehanna, a project in favor of whose survey a resolution was passed in the House of Representatives of the Thirty-ninth Congress. Gentlemen may say that these projects are impossible, that nature has placed in-

surmountable barriers in the way; but let them reflect on what engineering skill has and is accomplishing in these modern days in the piercing and scaling of mountains and the surmounting of obstructions, the very idea of which a few years ago would have been deemed chimerical. Let this Susquehanna ship-canal be built and become a success, and posterity will see the myriads who are destined to inhabit the mighty West pouring the main portion of their trade in the lap of Baltimore instead of New York. Who among us would desire this to take place? I will venture to answer not one. I well recollect its being whispered around in the Convention of 1846, among some of the members from the city of New York and its vicinity, that now was the time to make the best terms we could to make sure of the improvement of the Erie canal so as to secure the trade of the growing West; that the people of the central and western portions of the State now favor it on account of its affording cheaper transit for their productions; but that eventually there is danger when they find that it brings in competition with their cereals the cereals of the West, of their opposing it on the same selfish and mistaken grounds, that many of the farmers in the vicinity of the city of New York opposed the canal more than twenty years before. We have passed this period and there need be no fear on this score now, for if the cereals of the West have mainly superseded those of our State, other and more profitable productions have taken their place. The honorable gentlemen who have addressed this committee have produced the statistics bearing upon the subject under consideration. It is therefore unnecessary for me to trouble the committee with a repetition of them. Although differing on what should be the true policy of the State, there is one point on which, if I understand them aright, they all agree, and that is that the present tolls on the Erie, Champlain, Oswego and Seneca and Cayuga not only are sufficient to pay for their collection and the maintenance of the canals, but also afford a large profit, sufficient to pay off in a few years all the expenses incurred in their construction and improvement. They also agree, and statistics prove it, that there is a gradual and nearly regular increase in the amount of tonnage moved on the Erie canal. On the capacity of the canal, on the amount of tonnage which can be moved on it in a year, and whether it is now at times taxed to about its full capacity, they differ. On this point it becomes every member of this body to make up his mind from the best evidence he can obtain, and for myself, after making use of all the light within my reach, I have come to the conclusion that at times the present canal is taxed to its full capacity, which might for some years be prevented if the business could be equally distributed through the season of navigation, but that in practice this is an impossibility. I believe that the trade of the West, in the cereals and other productions, will continue to increase in the future as in the past, knowing from personal observation and other sources that nearly one-half of the territory on this side of the Mississippi is as yet in a state of nature and uncultivated, but destined soon to be made to yield food for the support of man. One

honorable gentleman [Mr. Conger], supposing that the Europeans might be supplied from elsewhere, triumphantly asked, where is your market? what will produce the increased transit of the cereals of the West on your canals? I would answer that gentleman, that the Eastern States and the State of New York and New Jersey, as is well known and admitted, do not raise one-half of what is sufficient for their support; that the population of this large territory, with the large cities in their midst, has increased and is increasing with great rapidity; that with the increase, as has been shown, less of the cereals are produced, other productions becoming necessary and more profitable; and that to supply this increase will draw, as we now draw, more largely on the virgin and fertile soils of the West, and this, letting alone the probable European demand, will produce the increased transit and business of the canals. This population will require cheap bread, and it will be their interest, as well as that of the western producer, to have cheap transit. The people of this State own the Erie canal and the laterals I have named; they have seen fit to engage in the transportation business, and are running them in opposition to the railroads of this State, those of other States, the Mississippi river, and the canals and rivers of Canada, with other rivals in embryo. To draw custom, to continue to make their route profitable, they must so manage as to make it the cheapest and most desirable, or otherwise they are in danger of losing their business and sinking the capital invested. Now, sir, to compete with these rivals what would a prudent individual or incorporation owning the property under these circumstances do? Would he allow his route to lay still, and refuse to improve it and enlarge its capacity so as to cheapen transportation and secure not only his present customers, but also invite others who are sure to come, because there was a small mortgage on it, and wait until its profits had paid off the debt, running at the same time, by this delay, the risk of his rivals by their improvements, securing the lion's share of the trade, and of having it diverted to other channels? No prudent individual or corporation would be guilty of such folly, or would hesitate a moment in making the necessary improvements, even if a new mortgage was necessary to secure the object. No individual, desirous of prospering and accumulating property, who owned premises worth, say \$50,000 which produced a rental of \$3,000 a year, and on which there was a mortgage of \$5,000, would hesitate a moment to borrow on its security \$5,000 more, to be used in improvements, if these improvements would greatly increase and perhaps double its rent. Now, sir, what do the Canal Committee propose to do with this property. They propose to improve it by gradually enlarging its locks and removing obstructions in its channel, the effect of which will be to increase its capacity and cheapen transportation; to make this improvement from its surplus funds, without creating a dollar of new debt, but simply by making provision for extending the time of payment of a portion of the present debt if it should be found necessary, by issuing new bonds to meet those which might fall due, and thus keeping inviolate the faith of

the State to the public credit, and paying, as one gentleman opposed to the canal report, he said desired to see done, our present indebtedness in the present depreciated currency. The committee estimate the cost of this work at \$8,000,000; in my judgment, if honestly managed, as proposed, it can be done for about this sum. If public robbery and stealing are to continue to be the order of the day, as they appear to have been under the late management, then no doubt it will cost more. For one, I hope that this Convention will inaugurate a new era, and that hereafter honesty will be the rule and dishonesty the exception in the management of our public affairs. Suppose that in consequence of errors, of unforeseen difficulties, of stealings (which God forbid), it should cost more, had we not better expend the excess than run the risk of losing our present advantages and the future benefit to be derived from our present investment? A prudent individual or corporation, in my judgment, under the circumstances would not hesitate a moment. The completion of the Erie canal, instead of a failure, proving to be a success and beneficial to the interests of the community not only in its immediate vicinity, but directly or indirectly to the whole State, induced the adjoining portions of the country to desire lateral canals to further their interests. They adroitly managed from time to time, to procure the passage of laws for their construction under the pretense that, they, like the Erie canal, would not only develop the resources of portions of the State then wild and uncultivated, but would prove to be paying investments. Perhaps more of these promises would have been realized, if it had not been for railroads since built, which have diverted the trade in other channels. The friends of these laterals, whenever an expenditure of money was necessary for the improvement of the Erie, would unite their forces and manage to defeat it, unless appropriations for their local schemes were included. By this log-rolling process, and against the better judgment of some of the ablest men of this State, the construction of such laterals as the Genesee Valley, the Crooked Lake, the Chenango, the Black River, the Oneida Lake, the Baldwinsville, and the Chemung have been constructed, one of them not as yet completed, whose tolls never have, and probably to the end of time never will pay the cost of maintenance and collection. The Champlain, the Oswego, and the Seneca and Cayuga have proved to be, and are likely to continue, paying investments and are therefore worthy of preservation and the fostering care of the State.

Mr. SPENCER—Does the gentleman know that the Chemung canal by its contributions to the Erie canal, to the Cayuga and Seneca canal and the tolls upon the tonnage from it, and the tolls which have been received upon it, upon the Erie and the Cayuga and Seneca canals for tonnage delivered upon the Chemung canal, has not only paid the cost of its maintenance, but the actual interest upon its entire cost of construction, leaving to-day over \$600,000 besides?

Mr. BERGEN—I do not so understand it by the report of the auditor.

Mr. SPENCER—Will the gentleman allow me

another question? Does the gentleman know that the Cayuga and Seneca canal is only made a paying and profitable canal by the tonnage received from the Chemung canal?

Mr. BERGEN—It does not so appear in the auditor's report which is my authority.

To proceed. According to the tables prepared by the auditor of the canal department, (to be found on page 131, etc., of the 2d vol. of the Manual), the deficiency account with some of these unproductive investments stands as follows:

Cost of superintendence, collection and repairs over receipts during the last 20 years, paid by the Erie and Champlain canals.

Chemung canal,.....	\$977,466 97
Crooked Lake canal,.....	309,341 84
Chenango canal,.....	520,316 12
Black River canal,.....	355,643 47
Genesee Valley canal,.....	837,254 34
Oneida Lake canal,.....	55,893 13
Baldwinsville canal,.....	15,511 55

Making a total of,.....\$3,071,427 42

Or an annual average of,.....\$153,571 37

Taking the last year as a guide the deficiency account stands as follows:

Chemung canal,.....	\$45,311 69
Crooked Lake canal,.....	7,369 16
Chenango canal,.....	80,116 18
Black River canal,.....	37,863 39
Genesee Valley canal,.....	93,110 58
Oneida Lake canal,.....	4,166 72
Baldwinsville canal,.....	2,646 68

Making a total of,.....\$270,584 40

In addition the auditor says that the locks of the Chenango in a short time will require replacing at an expense of not less than \$1,000,000; that those of the Genesee Valley, of which there are 110, must soon be rebuilt at a heavy cost, and that the Oneida Lake canal is not now in navigable order and is awaiting repairs or reconstruction. Judging from the past, as time advances, we must expect these deficiencies to increase instead of diminishing. These canals, however, are entitled to some credit for the business they afford to the Erie, but after giving them all the credit to which in any way they are entitled, it yet leaves them unproductive and a clog and an incubus on the resources of the State. By the auditor's supplementary account (on the 450th page of the 2d vol. of the Manual) there has been expended in the construction, enlargement, extension and improvement of these canals as follows:

Chemung canal,.....	\$1,273,261 86
Crooked Lake canal,.....	333,287 27
Chenango canal,.....	2,782,124 19
Black River canal,.....	3,224,779 55
Genesee Valley canal,.....	5,827,813 72
Oneida Lake canal,.....	64,837 63
Baldwinsville canal,.....	22,556 14

Making a total of,.....\$13,528,660 41

Now, sir, the question arises, what shall be done with these non-paying and unproductive canals? Shall we continue to run them forever, as recommended by the majority of the Committee on Canals at a present annual loss of over \$270,000, with a certainty of a regular increase, for the benefit of their respective localities, and that too with a necessity staring us in the face of almost immediately expending several

millions upon them to repair their dilapidated locks and structures? Is it just to attempt to fasten upon my constituents, upon the people of this State, for all time, what amounts, when stripped of special pleadings, to an annual tax for the benefit of the persons who live upon the line of these laterals? Is it just to compel us to pay a portion of the cost of transportation to market of every bushel of grain, or stick of lumber produced in their vicinity—to pay, in fact, a bounty on their production? Who pays for the transportation to market of the productions of the counties on the banks of the Hudson or of the farmers of Long Island? Does, or has, the State ever paid a cent for this purpose? No, sir, the State does not nor never has paid; the producers pay it out of their own pockets; they have never had the presumption, that I am aware of, even to ask the State to pay. There may have been some ground for affording temporary relief, of doling out charity to those portions of the State in their infancy, but twenty-one years and upward have elapsed since the system has been in operation, time has been given them to pass their minority, they have become strong and of age, and, in my judgment, it is about time that they sustain themselves without a continuance of this temporary relief. I believe they have the ability and can do it without greatly distressing themselves, but, like all other pensioners, they will hold on to their pittance as long as possible. What prudent individual (the State may be likened to an individual) owning a farm, a portion of which required irrigation to make it productive, after expending a large sum in the digging of ditches to introduce water, finding that the expenses of keeping the ditches in repair and of cultivation, without taking into consideration the cost of the ditches, amounted to more than he could realize from the sale of the crops, and after trying the experiment for more than twenty years with the same result, would continue the unprofitable practice? Few men would continue it five years, much less twenty; it would prove ruinous to any man, unless he had other means to sustain himself. This leak in the public treasury should be stopped, and a large annual sum, in addition to the millions required for repairs, will be secured to improve the navigation on the paying canals and improve our finances. Having so long enjoyed these bounties, so long received temporary relief, I suppose the people of those localities imagine they have a prescriptive right to them, and loud wailings and lamentations will be heard if they are suddenly deprived of them. Now, sir, to wean them gradually, to give them a fair opportunity to prepare themselves to rely upon their own resources, a minority of the Committee on Canals propose that the present system be allowed to continue in force until the first day of May, 1874, as provided in the following section reported by them, and entered on our files as No. 56, which section is as follows:

"Sec. 11. The total annual expenditure upon any lateral canal for collection, superintendence, repairs and management, shall not, from and after the first day of May, 1874, exceed the tolls upon, and other sources of income of such canal, including in such income the tolls upon the Erie canal

on all property passing from or through such lateral canal, except so far as any of said laterals or parts thereof may be necessary as feeders of water to the canals named in the seventh section of this article."

Adopt this section, and you make it the interest of the people of those localities to foster their canals, to watch over them and choke off the vampires who for years appear to have been sucking out their life-blood, and robbing the public of their just dues. If then they cannot sustain themselves, we had better, in my humble judgment, even go beyond what is proposed in this section, and authorize the Legislature to dispose of them in any manner they may deem expedient, to give them, if proper in their judgment, to the counties in which they are located, and let them have the benefit of the \$13,528,000 they have cost, and make the most out of them they can. This proposition I have no doubt will be met with the cry, of which I think I have seen symptoms, that unless you carry along these laterals, unless you continue this bounty and temporary relief forever, your Constitution will be defeated, for every man on the lines of these laterals will vote against it. Now, sir, this is the same spirit, the same evil geni which all along has succeeded, by assuming a threatening attitude, in bleeding the other portions of the State, and making them tributaries to its power. I think the time has arrived to exorcise this spirit, to destroy his power, to defy him, and to trust that the good sense of the mass of the people of this State will induce them to rise in their majesty and mete out equal justice to all, regardless of consequences. While occupying this floor, I will take the liberty of saying a few words upon another matter contained in the majority report of the Committee on Canals, to which, as one of the minority, I dissented, and that is whether the Superintendent of Public Works, an officer who is to hold for eight years, and who is to be vested with full power over the canals, and to be held responsible, should be appointed or elected. The majority recommend his appointment by the Governor and Senate, a minority, that he should be elected by the people. Now sir, I have not as yet lost all faith in the virtue and intelligence of the people, or in the theory that the people are capable of self government, and have sufficient discernment to elect their own officers. From what has been advanced by honorable gentlemen on this floor, I conclude that the faith of many of them has been shaken, that they are convinced that the people of this country have become so corrupt, ignorant and demoralized, that they can no longer be trusted. If they are honest in their opinions and correct in their conclusions, then, sir, we had better at once abandon our present system, subscribe to the old Federal doctrine, reorganize our government on the strong central principle, elect a Governor and Senate for life, and give them the appointment, not only of the Superintendent of Public Works, but also of all of our principal officers. Give the nomination of this officer to the Governor, and in addition to the great patronage already bestowed upon him, you add indirectly the control and immense patronage of the canals. In 1846 the Constitutional Convention was satisfied, from

the experience of the past, that it was wise to reduce the patronage of the Governor; now a new generation propose to fly back to the ills their predecessors suffered from. We have had some experience of the judgment of the Governor in the appointment of canal officers. A few years ago a canal commissioner was appointed by the Governor to fill a vacancy. As near as I can judge from the report of the investigating Committee of the Senate, this appointee turned out to be one of the most dishonest of the gang of pilferers, and not very creditable to the Governor's judgment. Of such specimens we want no more. If we trust the people to elect their Governor why not trust them to elect this officer? If you have faith in their good judgment in the one case have faith in the other. It may be asked, why not continue the present system of three or more heads to the canal department, so as to divide the great responsibility? My answer is, this has been tried and failed to give satisfaction; under it plunder has been the order of the day, and, judging from the investigations of the Senate Committee, it has been customary for the several persons in charge each to retire at the end of his term with a competency, or at least with a full purse. In consequence of the shortness of the present term of these officers, three years, in the course of eight years (the term proposed for the new superintendent) quite a number of the present class of officers would, under a corrupt system, take the liberty of helping themselves with sufficient for life. If corruption is to continue to be the rule, then I would prefer the one-man power, for it costs less to support and enrich one than it does to enrich many. There is one thing which is clear, and that is that no system will give satisfaction unless honestly managed, and that almost any system honestly managed will work well. Everything depends on the honesty and capacity of those in charge, and I think the people are as likely to select an honest and capable man, as the Governor. For one, I yet have faith in the people of this country; I depend upon their good judgment. They may at times be mistaken and led into error, but eventually they will return to the right path and will hurl from their places those who have robbed them. We all desire the prosperity of our country. For one, I hope that the day will never arrive that the people of this country will become so demoralized as to show themselves unworthy of self-government and, like Mexico and the Central and South American States, inhabited by a mixed race, become a prey to continual revolutions, with no security for life or property.

Mr. SEYMOUR—The Committee on Canals, after much labor in the investigation of our canal system, after much thought and reflection, have presented for the consideration of this Convention two general propositions. One of them relates to the care and management of the canals, and the other relates to their improvement and to the appropriation of their finances. I have been gratified to find that the gentleman from Kings [Mr. Barnard] has with such care and labor examined the testimony taken under the authority of the Legislature in reference to the working of our present system of management of the canals,

and that he has presented to this Convention the results of his examination so fully and so ably as he has. The Committee on Canals had before them much of the same testimony. They considered it; and it was in reference to the system of fraud and of corruption, which is developed in that testimony, that they have prepared and presented to this Convention for its adoption the section relating to the care and management of the canals; and, before I proceed to consider a more important subject which has occupied this committee almost altogether hitherto—the finances derived from the canal—I wish to say a few words in reference to this proposition. It has been our endeavor, sir, to change the policy which has hitherto prevailed for the purpose of placing the canals, their care and management, in all and every department, in the hands of one man, who shall be selected, who shall be a man who will best discharge this high duty. We desire by doing that to place the responsibility of these great works, so important to the State, in the hands of some one man known to the people, and whom the people will look to for the faithful discharge of the high duty of his office. We believe that this power will be exercised better, with more efficiency, with more care, with less expenditure, and with perfect honesty, in the hands of such a man, than it will be if it shall continue to be intrusted as for many years past to several persons. When such has been the case we have of late years found that none of the officials seemed to feel personally any responsibility to the people for the great work intrusted to their charge. The office of the Superintendent of Public Works of this State should command the highest talent, the highest character that can be selected from our citizens. Here are a thousand miles of canal; it is the great net-work of our internal system of trade; it is a work that affects the interest of every citizen of this State; it should ever be supervised with the greatest care, integrity and ability. We depend upon its results for the support of our government in part, and largely for the discharge of that indebtedness which is now pressing upon the State. We propose that the individual to be intrusted with this high office shall bring to its discharge the highest character for integrity, and that he, by the position given him, by the salary allowed him, and by the power which he will possess, shall be able to attract the attention of the people of this State, to secure their confidence, and to create a character and position for himself that will commend him to the people as worthy of the highest office in their gift. The office of the canal commissioner was once such an office in this State. It then commanded the best character, the best ability, the highest integrity; and it was a proud day for this State, and for our system of internal improvements, when such men as Van Rensselaer, Young, and Bouck and their compeers had the charge of this system. It was prosperous then. There were no charges of corruption; none of our citizens felt that the public interests were intrusted to bad hands; none of them feared that the public moneys would be squandered. The people felt a confidence in these men, in their judgment,

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- A delegate from the twenty-second senatorial district, 717, 831, 1021, 1286, 1347, 2631, 2680.
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A delegate from the second senatorial district, 121, 517, 519, 606, 645.

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BARTO, HENRY D.,

A delegate at large.

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A delegate at large, 669, 2692, 3563, 3749.

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Appointed member of committee on currency, banking, etc., 96.

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BEALS, OLIVER B.,

A delegate from the twentieth senatorial district, 751.

Appointed member of committee on education, etc., 96.

Oath of office taken by, 18.

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BECKWITH, GEORGE M.,

A delegate from the sixteenth senatorial district, 979, 1322, 1735, 1736, 1764, 1827, 1843, 2162, 2190, 2550, 3352, 3606, 3688.

Appointed member of committee on canals, 95.

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BERGEN, TEUNIS G.,

A delegate from the third senatorial district, 1380, 1381, 2166, 2670, 3251, 3295, 3369, 3573, 3589, 3813.

Appointed member of committee on canals, 95.

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BICKFORD, MARCUS,

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- A delegate from the thirtieth senatorial district, 13, 380, 577.
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- A delegate from the twentieth senatorial district, 31, 285, 306, 1343, 1380, 1893, 2162, 3498, 3555.
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Appointed member of committee on preamble and bill of rights, 95.

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- Resolution of instruction to committee on revision to amend article on suffrage in reference to female suffrage, 3562.
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- Resolution of thanks to mayor and common council of Albany, 3874.
- Resolution requesting Legislature to amend act calling Convention, 2736.
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GREELEY, HORACE,

- A delegate at large, 24, 29, 31, 40, 42, 46, 103, 181, 227, 306, 350, 351, 354, 401, 574, 590, 605, 618, 661, 720, 925, 993, 1133, 1224, 1286, 1294, 1298, 1365, 1517, 1828, 1836, 3224.
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- Petition against State interference with the practice of medicine, presented by, 1779.

- Petition in reference to drainage, presented by, 350.
- Petition in reference to female suffrage, presented by, 350.
- Petition in reference to prohibiting donations to sectarian institutions, presented by, 249, 391, 486, 665, 1348, 1563.
- Petition in reference to prohibition of sale of intoxicating liquors, presented by, 249, 350, 666, 790, 1171, 1306, 1348, 1625, 2170.
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- Remarks of, in reference to communication from commissioners of canal fund, 129, 130, 131.
- Remarks of, in reference to publication of debates, 105, 117.
- Remarks of, in reference to resolution instructing committee of the whole to report on reports of committees on finances and canals, 1564.
- Remarks of, on amendments to report of committee on suffrage, 221, 227, 480, 512, 513.
- Remarks of, on joint report of committee on currency, banking, etc., and corporations other than municipal, 1045, 1056, 1082, 1088, 1092, 1106.
- Remarks of, on motion for call of Convention, 726.
- Remarks of, on motion to refer reports of committees on finances and canals to same committee of the whole, 1211.
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- Remarks of, on report of committee on counties, towns, etc., 1136.
- Remarks of, on report of committees on finances and on canals, 1831, 1836.
- Remarks of, on report of committee on Governor, Lieut.-Governor, etc., 889.
- Remarks of, on report of committee on militia and military officers, 1219, 1224.
- Remarks of, on report of committee on organization of Legislature, etc., 787, 836, 866, 871.
- Remarks of, on report of committee on pardoning power, 1183.
- Remarks of, on report of committee on powers and duties of Legislature, 1294, 1367, 1368, 1372, 1376.
- Remarks of, on report of committee on right of suffrage, 204, 208, 211.

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GROSS, MAGNUS,

A delegate from the sixth senatorial district.

Appointed member of committee on industrial interests, etc., 96.

Oath of office taken by, 18.

Petition in reference to prohibitory legislation, presented by, 350, 1098, 1171.

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HADLEY, STERLING G.,

A delegate from the twenty-sixth senatorial district, 937, 1227, 2696, 2702, 2778, 3644.

Appointed member of committee on counties, towns, etc., 96.

Oath of office taken by, 18.

Petition in reference to prohibiting donations to sectarian institutions, presented by, 665.

Remarks of, on amendments to report of committee on suffrage, 488.

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Remarks of, on report of committee on revision on article on preamble and bill of rights, 3550.

Remarks of, on report of committee on revision on article on town and county officers, 3653.

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HALE, MATTHEW,

A delegate from the sixteenth senatorial district, 46, 49, 60, 90, 116, 731, 991, 1091, 1147, 1981, 2008, 2018, 2034, 2090, 2091, 2099, 2164, 2405, 2411, 2453, 2638, 2646, 2690, 2692, 2758, 3005, 3474, 3550, 3559, 3639, 3749, 3765, 3910.

Appointed member of committee on judiciary, 95.

Appointed member of committee on submission of Constitution, 2838.

Oath of office taken by, 18.

Remarks of, in reference to adjournment, 1916.

Remarks of, in reference to removing limitation of compensation for publication of debates, 3575.

Remarks of, in reference to State aid to railroads, 3475.

Remarks of, on amendments to report of committee on suffrage, 482.

Remarks of, on joint report of committee on currency, banking, etc., and corporations other than municipal, 1079, 1094.

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Remarks of, on motion to refer reports of committees on finances and canals to same committee of the whole, 1213.

Remarks of, on notice to amend rule twenty-one, 1233.

- Remarks of, on report of committee appointed to report manner of revision of Constitution, 77.
- Remarks of, on report of committee on amendments to and submission of Constitution, 3902, 3903.
- Remarks of, on report of committee on contingent expenses, 3867.
- Remarks of, on report of committee on counties, towns, etc., 1140.
- Remarks of, on report of committee on education, 2852, 2854, 2872.
- Remarks of, on reports of committees on finances and canals, 1805, 1823, 1873, 2008.
- Remarks of, on report of committee on future amendments and revision of Constitution, 2806, 2809.
- Remarks of, on report of committee on Governor, Lieut.-Governor, etc., 1113.
- Remarks of, on report of committee on judiciary, 2181, 2182, 2183, 2199, 2212, 2299, 2300, 2388, 2409, 2411, 2412, 2413, 2414, 2415, 2416, 2435, 2441, 2450, 2451, 2469, 2470, 2508, 2533, 2542, 2554, 2559, 2605, 2631, 2644, 2695, 2697, 2708.
- Remarks of, on report of committee on organization of Legislature, etc., 683.
- Remarks of, on report of committee on powers and duties of Legislature, 1332, 1374, 2102, 2104, 2766.
- Remarks of, on report of committee on revision on article on finance, 3753.
- Remarks of, on report of committee on revision on article on judiciary, 3714.
- Remarks of, on report of committee on revision on article on organization of Legislature, etc., 3603.
- Remarks of, on report of committee on revision on article on preamble and bill of rights, 3542.
- Remarks of, on report of committee on revision on article on suffrage, 3580.
- Remarks of, on report of committee on revision on article on Secretary of State, Comptroller, etc., 3641.
- Remarks of, on report of committee on revision on article on town and county officers, 3665.
- Remarks of, on report of committee on Secretary of State, Comptroller, etc., 1259.
- Remarks of, on report of committee on suffrage, 296, 299, 300, 301, 597.
- Remarks of, on report of committee on town and county officers, etc., 905, 930, 936, 973, 990, 991, 1004.
- Remarks of, on resolution of thanks to President, 3864.
- Remarks of, on resolution requesting information from Comptroller in reference to compensation of absentees, 2358.
- Remarks of, on resolution to appoint committee to report mode of submission of amendments to Constitution, 393.
- Resolution in reference to organization of Legislature, 183.
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- Resolution of inquiry in reference to representation, 100.
- Resolution of instruction to committee on revision to amend article on finance, in reference to State debt contracted for specific purposes, 3753.
- Resolution of instruction to committee on revision on powers and duties of Legislature, etc., in reference to escheat, 3603.
- Resolution of instruction to committee on revision to amend article on preamble and bill of rights, in reference to last appeal to jury, 3542.
- Resolution of instruction to committee on revision to amend article on Secretary of State, Comptroller, etc., in reference to statute of limitations, 3639, 3641.
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HAMMOND, JOHN M.,

- A delegate from the thirtieth senatorial district.
- Appointed member of committee on militia, etc., 96.
- Oath of office taken by, 18.
- Petition in reference to education, presented by, 1215.
- Petition in reference to female suffrage, presented by, 196.
- Remarks of, on reports of committees on finances and canals, presented by, 1702.
- Remarks of, on report of committee on powers and duties of Legislature, 1342.

HAND, STEPHEN D.,

- A delegate from the twenty-fourth senatorial district, 299, 604, 1790, 2132, 2243, 2604, 2669, 3004, 3238, 3426, 3474, 3925, 3926.
- Appointed member of committee on adulteration and sale of intoxicating liquors, 142.
- Appointed member of committee on cities, etc., 95.
- Appointed member of committee on practice of medicine, 2972.
- Appointed member of committee on Secretary of State, etc., 95.
- Oath of office taken by, 18.
- Petition in reference to practice of medicine, presented by, 2654, 2684, 2925, 2971.
- Petition in reference to prohibition of sale of intoxicating liquors, presented by, 249, 932.
- Remarks of, in reference to State aid to railroads, 3467, 3469.
- Remarks of, on amendments to report of committee on suffrage, 520.
- Remarks of, on consideration of report of committee on rules, 75.
- Remarks of, on joint report of committee on currency, banking, etc., and corporations other than municipal, 1097.
- Remarks of, on report of committee on cities, 3014, 3015, 3016.
- Remarks of, on report of committees on finances and canals, 1790, 1942, 1943, 2306, 2319.
- Remarks of, on report of committee on judiciary, 2440, 2441, 2585, 2586, 2610.
- Remarks of, on report of committee on preamble and bill of rights, 3237, 3252.

- Remarks of, on report of committee on revision on article on organization of Legislature, etc., 3681.
- Remarks of, on report of committee on right of suffrage, 213, 244, 245, 431, 432, 433, 434.
- Remarks of, on report of committee on town and county officers, etc., 946.
- Remarks of, on resolution in reference to practice of medicine, 2971.
- Resolution in reference to compensation of clergymen, 3918.
- Resolution in reference to revision of bills, etc., 158.
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HARDENBURGH, JACOB,

- A delegate at large, 644, 1343, 1375, 1489, 1657, 1821, 2053, 2607, 2672, 2677, 2679, 2683, 3500, 3573, 3655, 3701, 3709, 3728, 3737.
- Appointed member of committee on finances of State, etc., 95.
- Appointed member of committee on preamble and bill of rights, 95.
- Oath of office taken by, 18.
- Remarks of, in reference to State aid to railroads, 3477, 3478, 3479.
- Remarks of, on amendments to report of committee on suffrage, 525.
- Remarks of, on joint reports of committees on finances and on canals, 1657, 1658, 1661, 1812, 2307, 2349.
- Remarks of, on report of committee on counties, towns, etc., 1142, 1143, 1144, 1162, 1163.
- Remarks of, on report of committee on judiciary, 2227, 2605, 2608, 2609, 2643, 2648, 2650, 2651, 2677, 2678, 2681.
- Remarks of, on report of committee on organization of Legislature, etc., 778, 846.
- Remarks of, on report of committee on powers and duties of Legislature, 1343, 1344.
- Remarks of, on report of committee on revision on article on finance, 3765, 3678, 3835.
- Remarks of, on report of committee on revision on article on militia of State, 3697.

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HARRIS, IRA,

A delegate at large, 31, 53, 60, 62, 79, 83, 89, 91, 93, 101, 103, 120, 150, 1012, 2702, 3065, 3081, 3155, 3710.
 Appointed member of committee on cities, etc., 95.
 Communication from mayor of Albany, submitted by, 2710.
 Oath of office taken by, 18.
 Petition in favor of abolishing office of regents of university, presented by, 1193, 1361, 1416, 1624, 2710.
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 Remarks of, on report of committee on organization of Legislature, etc., 770.
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Remarks of, on report of committee on revision on article on judiciary, 3709.
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 Remarks of, on report of committee on town and county officers, etc., 964, 984, 998.
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 Resolution in reference to employment of clerks by committees, 101.
 Resolution in reference to number of tax payers in city of New York, 100, 120.
 Resolution of instruction to committee on revision to amend article on counties, towns, etc., in reference to taxation, 1911.
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 Resolution requesting clerk of court of appeals to furnish information, 37, 137.
 Resolution to appoint select committee to report mode of proceeding to revise Constitution, 20.
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HATCH, ISRAEL T.,

A delegate from the thirty-first senatorial district, 31, 41, 62, 88, 169, 1044, 1731, 1735, 2338, 2658, 2691.
 Appointed member of committee on finances of State, etc., 95.
 Minority report from committee on finances of State, submitted by, 797.
 Oath of office taken by, 18.
 Petition in reference to prohibiting donations to sectarian institutions, presented by, 233, 626, 754.

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- Remarks of, on amendments to report of committee on suffrage, 506.
- Remarks of, on consideration of report of committee on rules, 62.
- Remarks of, on joint report of committees on finances and canals, 1632, 1729, 1739, 1837, 2023, 2229, 2234, 2236, 2344.
- Remarks of, on report of joint committee on currency, banking, etc., and corporations other than municipal, 1044.
- Remarks of, on report of committee on organization of Legislature, etc., 677.
- Remarks of, on resolution calling for information in reference to canals, 31, 41, 167, 169.
- Remarks of, on resolution in reference to reducing tolls on canals, 1530.
- Resolution in reference to reducing tolls on canals, 1530.
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- Resolution of inquiry to Auditor of canal department in reference to Champlain canal, 640, 646.
- Resolution of instruction to committee on revision to amend article on canals in reference to superintendent of public works, 3064.
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HISCOCK, FRANK,

- A delegate from the twenty-second senatorial district, elected to fill vacancy occasioned by the death of L. Harris Hiscock.
- Appointed member of committee to provide for care of disabled soldiers of State, 1531.
- Oath of office taken by, 232.
- Petition against abolishing office of regents of university, presented by, 1771.
- Petition in reference to prohibiting donations to sectarian institutions, 250.
- Petition in reference to the more complete recognition of Deity in the Constitution, presented by, 446.
- Remarks of, on report of committees on finances and canals, 1743, 2349, 2353.
- Remarks of, on report of committee on powers and duties of Legislature, 1357.
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HISCOCK, L. HARRIS,

- A delegate from the twenty-second senatorial district.
- Announcement of the death of, 25, 29.
- Committee appointed in reference to obsequies of, 29.
- Oath of office taken by, 18.
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HITCHCOCK, ADOLPHUS F.,

- A delegate from the twelfth senatorial district, 2697.
- Appointed member of committee in reference to meeting of Convention in Troy, 2660.
- Appointed member of committee on corporations, other than municipal, etc., 96.
- Oath of office taken by, 18.
- Petition in reference to prohibition of sale of intoxicating liquors, presented by, 625.
- Resolution of instruction to committee on revision to amend article on organization of Legislature, etc., in reference to adjournment of Legislature, 3594.
- Resolution to procure diagrams of Convention chamber, 37.

HITCHMAN, WILLIAM,

- A delegate from the eighth senatorial district, 170, 671, 929.
- Appointed member of committee on currency, banking, etc., 96.
- Appointed member of committee to provide for care of disabled soldiers of State, 1531.
- Oath of office taken by, 18.
- Petition in reference to prohibiting donations to sectarian institutions, presented by, 624.
- Remarks of, on report of committee on suffrage, 599.
- Remarks of, on report of committee on town and county officers, etc., 930.
- Resolution of inquiry to tax commissioners of city of New York in reference to value of real estate owned by religious denominations, 363, 646.

HOLLENBECK, NATHANIEL,

- Appointed messenger, 29.

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HOTAILING, P. J.,

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HOUSTON, WILLIAM H.,

A delegate from the tenth senatorial district.

Appointed member of committee on salt springs, 96.

Oath of office taken by, 18.

Petition against abolishing office of regents of university, presented by, 1778.

Petition in favor of abolishing board of regents, presented by, 1624.

Petition in favor of female suffrage, presented by, 177.

Petition in reference to prohibition of donations to sectarian institutions, presented by, 624.

HUNTINGTON, BENJAMIN N.,

A delegate from the nineteenth senatorial district.

Appointed member of committee on currency, banking, etc., 96.

Oath of office taken by, 18.

Petition in reference to management of canals of the State, presented by, 302.

Petition in reference to prohibition of donations to sectarian institutions, presented by, 625.

HUTCHINS, WALDO,

A delegate at large, 230, 357, 589, 601, 604, 638, 671, 1133, 2948, 3002, 3169, 3719, 3736, 3795, 3831.

Appointed member of committee on canals, 95.

Appointed member of committee on judiciary, 95.

Appointed member of committee on submission of Constitution, 2838.

Oath of office taken by, 18.

Petition in reference to free school system, presented by, 626.

Petition in reference to prohibiting donations to sectarian institutions, presented by, 626.

Petition in reference to right of suffrage, presented by, 411.

Remarks of, on amendments to report of committee on suffrage, 523.

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Remarks of, on report of committee on organization of Legislature, etc., 834.

Remarks of, on report of committee on revision on article on judiciary, 3735.

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Remarks of, on report of committee on town and county officers, etc., 919, 920, 947, 948, 949, 950.

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Remarks of, on resolution to appoint committee to report mode of submission of amendments to Constitution, 393, 411.

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Resolution of inquiry to corporation counsel of city of New York in reference to suits and judgments against city, 646, 673.

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A delegate from the twenty-first senatorial district.

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A delegate from the sixth senatorial district.

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